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COMPLETE SEPARATE INDEXES

Relating to

MISCELLANEOUS FEDERAL TAXES

Under the Revenue Act of 1918

Excluding Income and Profits Taxes

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ESTATE TAX

REVENUE ACT OF 1918
(TITLE IV, SECTIONS 400-410)

Law,
Regulations 37 (Revised),
Treasury Decisions and
Unofficial Rulings

Annotated and Indexed

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LAW,

REGULATIONS No. 37 (REVISED)

TREASURY DECISIONS AND UNOFFICIAL RULINGS

RELATING TO

ESTATE TAX

[¶1] Sec. 400. That when used in this title—

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

[¶2] Sec. 401. That (in lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

- 1 per centum of the amount of the net estate not in excess of \$50,000;
- 2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;
- 3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;
- 4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;
- 6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;
- 8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;
- 10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;
- 12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;
- 14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;
- 16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;
- 18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;
- 20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;
- 22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and
- 25 per centum of the amount by which the net estate exceeds \$10,000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "And Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor.

[¶3] Article 1. Neither a property nor a legacy tax.—The Federal estate tax is imposed upon the transfer of the net estate, determined in the manner prescribed, of every person dying after September 8, 1916. The tax is not laid upon the property, but upon its transfer from the decedent to others. The subject of tax is the transfer of the entire net estate, not any particular

legacy, devise, or distributive share. It is not an individual inheritance tax. The value of the separate interests and the relationship of the beneficiary to the decedent have no bearing upon the question of liability or the extent thereof. The transfer of property is taxable, although it escheats to the State for lack of heirs.

[¶ 4] Art. 2. **Nature of transfer.**—The statute embraces transfers by will or under the intestate laws, and also transfers made by the decedent in his lifetime, when made in contemplation of death or intended to take effect in possession or enjoyment at or after his death. The statute also enumerates certain special cases not strictly of either character just described. The practical test of the existence of a taxable transfer is whether the statute directs that the property in question be included in the gross estate.

[¶ 5] Art. 3. **The various states.**—The estate tax was first imposed by the Act of September 8, 1916. This law was amended by the Act of March 3, 1917 (Title III), and the Act of October 3, 1917 (Title IX). These two statutes increased the rate of tax. The Revenue Act of 1918 (Title IV), which became effective on February 25, 1919, supplants all prior acts as to the estates of decedents dying on or after that date, but continues many of the provisions of the earlier acts with reference to the estates of decedents dying before that date. The Revenue Act of 1918 makes extensive changes in the former acts, both as to the rate of tax and otherwise. It is herein referred to as "the statute." References to other statutes are specific.

NOTE: The Federal Estate Tax, as contained in Title II of Act of September 8, 1916, was held constitutional in the case of *New York Trust Co. vs. Eisner*; U. S. District Court, in decision of January 20, 1920. (T. D. 2976.)

ESTATES SUBJECT TO TAX.

[¶ 6] Art. 4. **Description of taxable estates.**—The tax is imposed in the case of the estate of "every decedent," although, by reason of an exemption, the net estate of a resident decedent, in order to be taxable, must exceed \$50,000. (See Sec. 403 (a) 4.) The estate of a nonresident decedent, however, is taxable if any part of it is situated in the United States. The statute takes no account of the citizenship of the decedent, but prescribes different rules according to whether the decedent was a "resident" or a "nonresident" of the United States. A person residing in Italy is a "nonresident," for the purpose of the tax, although a citizen of the United States; a person residing in the United States is a "resident," although a citizen of Italy. A "resident" is one who at the time of his death resided in the States, the Territories of Alaska or Hawaii, or the District of Columbia. All other persons are "non-residents." Persons residing in Porto Rico or the Philippine Islands are "nonresidents."

[¶ 7] Art. 5. **Definition of "resident."**—A person is a "resident" of the United States, for the purposes of this tax, only in case he had a domicile therein at the time of his death. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal. A decedent who died while abroad will be presumed to be a nonresident, and the burden of proving the contrary rests upon the executor.

DETERMINATION OF TAX LIABILITY.

[¶ 8] Art. 6. **Manner of determining liability.**—The first step in the determination of tax liability is to ascertain the value of the decedent's gross estate in the manner prescribed by law. (See Arts. 12 to 36.) The second

step is to deduct from this value certain amounts specified by law in order to arrive at the value of the net estate. (See Arts. 37 to 64.) The third step is to obtain the sum of certain percentages of the value of successive portions of the net estate, as provided by the applicable taxing act. (See Arts. 7, 8.)

[¶9] Art. 7. **Rates of tax.**—The amount of tax is obtained by finding the sum of certain percentages of the value of the net estate according to the provisions of the applicable taxing act.

There are four rates of tax imposed, respectively, by the Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, and the Revenue Act of 1918. In the case of each act the rates contained therein are applicable to the estates of decedents who died on or after the effective date of the act and prior to the effective date of the next succeeding act. A table of the four sets of rates is given below:

Rates of estate tax.

Blocks of net estate			1	2	3	4
			Act of 1916 (effective Sept. 9, 1916)	Amendment of Mar. 3, 1917 (effective Mar. 3, 1917)	Act of 1917 (effective Oct. 4, 1917)	Act of 1918 (effective Feb. 25, 1919)
Exceeding	Not exceeding	Amount of block				
			Per cent	Per cent	Per cent	Per cent
\$ 50,000	\$ 50,000	\$ 50,000	1	1½	2	1
50,000	150,000	100,000	2	3	4	2
150,000	250,000	100,000	3	4½	6	3
250,000	450,000	200,000	4	6	8	4
450,000	750,000	300,000	5	7½	10	6
750,000	1,000,000	250,000	5	7½	10	8
1,000,000	1,500,000	500,000	5	9	12	10
1,500,000	2,000,000	500,000	6	9	12	12
2,000,000	3,000,000	1,000,000	7	10½	14	14
3,000,000	4,000,000	1,000,000	8	12	16	16
4,000,000	5,000,000	1,000,000	9	13½	18	18
5,000,000	6,000,000	1,000,000	10	15	20	20
6,000,000	7,000,000	1,000,000	10	15	20	20
7,000,000	8,000,000	1,000,000	10	15	20	20
8,000,000	9,000,000	1,000,000	10	15	22	22
9,000,000	10,000,000	1,000,000	10	15	22	22
10,000,000			10	15	25	25

The rates given by the different acts, as set forth above, apply to the estates of decedents dying within the following dates:

- Column 1, Revenue Act of 1916, effective Sept. 9, 1916, to March 2, 1917, inclusive.
- Column 2, amendment of March 3, 1917, effective March 3, 1917, to Oct. 3, 1917, inclusive.
- Column 3, Revenue Act of 1917, effective Oct. 4, 1917, to Feb. 24, 1919, inclusive.
- Column 4, Revenue Act of 1918, effective on and after Feb. 25, 1919.

[¶10] Art. 8. **Computation of tax.**—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on or after February 25, 1919, would be computed as follows:

Amount of first block.....	\$ 50,000 at 1 per cent	\$ 500
Amount of second block.....	100,000 at 2 per cent	2,000
Amount of third block.....	100,000 at 3 per cent	3,000
Amount of fourth block.....	200,000 at 4 per cent	8,000
Amount of fifth block.....	300,000 at 6 per cent	18,000
Amount of sixth block.....	250,000 at 8 per cent	20,000
Remainder	240,000 at 10 per cent	24,000
Total net estate.....	\$1,240,000	Total tax...\$75,500

There is subjoined on page 5 a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The net estate of a decedent dying on or after February 25, 1919, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block prior to this amount is \$1,000,000, and that the total tax on a million dollars under the rates in force amounts to \$51,500. Upon the remainder of the estate, \$240,000, the tax is computed at the rate contained in the following line, or at 10 per cent. The tax on this amount is consequently \$24,000. The following result is thus obtained:

Total tax on.....	\$1,000,000	\$51,500
Tax on.....	240,000	24,000
Total	\$1,240,000	\$75,500

MILITARY EXEMPTION.

[¶ 11] Art. 9. **Exempt estates.**—The estates of persons dying while actually serving in the military or naval forces of the United States in the present war with Germany are exempt from tax. The date of the termination of the war, for the purpose of this tax, is that fixed by proclamation of the President. An estate is also exempt if a person so serving dies after leaving the service, provided his death is directly traceable to injuries received, or disease contracted, while in such service. The term “military or naval forces of the United States” includes, among other units, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female. This exemption applies to any estate tax imposed, whether by the Revenue Act of 1916 or subsequent statutes. If the tax has been collected, the executor should make claim for refund. For procedure in the case of claims for refunds, see Article 11.

[¶ 12] Art. 10. **Exemption must be proved.**—In every case where the exemption is claimed the right must be proved by the executor. Formal claim for military exemption on Form 793, accompanied by supporting evidence, should be filed with the 60-day notice, or as soon thereafter as the necessary evidence may be secured, and in any case not later than one year after the decedent's death. Where the decedent died while actually serving in the military or naval forces during the war with Germany, the evidence in support of the claim should consist of a certificate stating the occurrence of death under those circumstances, issued, in the case of a soldier, by The Adjutant General, in the case of a sailor by the Surgeon General of the Navy, and in the case of a marine by the Commandant.

Where the decedent died while serving in the military or naval forces, but after the termination of the war with Germany, there should be submitted:

(1) Certificate of The Adjutant General, Surgeon General of the Navy, or commanding officer as above, stating the occurrence of death while in the service, and the cause of death.

(2) Affidavits or other evidence to show that the death resulted from injuries received, or disease contracted, while serving in the military or naval forces during the war with Germany.

Where the decedent died after discharge from the military or naval forces there should be submitted:

(1) Certificate of discharge from the service, or copy of such certificate.

(2) Certified copy of public record of death, showing cause of death.

(3) Affidavit of physician who attended decedent during last illness, setting forth the medical history of the decedent while under his treatment.

(4) Affidavits or other evidence to show that the death resulted from injuries received, or disease contracted, while serving in the military or naval forces during the war with Germany.

Table for computing estate tax.

Net estate		Date of death												
		1			2			3			4			
Exceeding	Not ex- ceeding	Amount of block	Sept. 9, 1916, to Mar. 2, 1917, inclusive (Revenue Act of 1916)			Mar. 3, 1917, to Oct. 3, 1917, inclusive (Amendment)			Oct. 4, 1917, to Feb. 24, 1919, inclusive (Revenue Act of 1917)			On and after Feb. 25, 1919 (Revenue Act of 1918)		
			Rate (per cent)	Tax	Total	Rate (per cent)	Tax	Total	Rate (per cent)	Tax	Total	Rate (per cent)	Tax	Total
\$ 50,000	\$ 50,000	\$ 50,000	1	\$ 500	\$ 500	1½	\$ 750	\$ 750	2	\$ 1,000	\$ 1,000	1	\$ 500	\$ 500
150,000	150,000	100,000	2	2,000	2,500	3	3,000	3,750	4	4,000	5,000	2	2,000	2,500
250,000	250,000	200,000	3	3,000	3,500	4½	4,500	8,250	6	6,000	11,000	3	3,000	5,500
450,000	450,000	300,000	4	8,000	13,500	6	12,000	20,250	8	16,000	27,000	4	8,000	13,500
750,000	750,000	500,000	5	13,000	28,500	7½	22,500	42,750	10	25,000	57,000	6	18,000	31,500
1,000,000	1,000,000	750,000	6	12,500	41,000	9	18,750	61,750	12	30,000	82,000	8	20,000	51,500
1,500,000	1,500,000	1,000,000	7	30,000	71,000	10	45,000	109,500	14	60,000	142,000	10	50,000	101,500
2,000,000	2,000,000	1,500,000	8	30,000	101,000	12	45,000	151,500	16	60,000	202,000	12	60,000	161,500
2,500,000	2,500,000	2,000,000	9	70,000	171,000	14	105,000	256,500	18	90,000	342,000	14	140,000	301,500
3,000,000	3,000,000	2,500,000	10	80,000	251,000	15	120,000	376,500	20	180,000	502,000	16	160,000	461,500
4,000,000	4,000,000	3,000,000	11	90,000	341,000	16	135,000	511,500	22	200,000	682,000	18	180,000	641,500
5,000,000	5,000,000	3,500,000	12	100,000	441,000	17	150,000	661,500	24	200,000	882,000	20	200,000	841,500
6,000,000	6,000,000	4,000,000	13	100,000	541,000	18	150,000	811,500	26	200,000	1,082,000	22	200,000	1,041,500
7,000,000	7,000,000	4,500,000	14	100,000	641,000	19	150,000	961,500	28	220,000	1,282,000	24	220,000	1,241,500
8,000,000	8,000,000	5,000,000	15	100,000	741,000	20	150,000	1,111,500	30	220,000	1,502,000	26	220,000	1,461,500
9,000,000	9,000,000	5,500,000	16	100,000	841,000	21	150,000	1,261,500	32	220,000	1,722,000	28	220,000	1,681,500
10,000,000	10,000,000	6,000,000	17	100,000	941,000	22	150,000	1,411,500	34	220,000	1,902,000	30	220,000	1,861,500
			18			23			36			32		
			19			24			38			34		
			20			25			40			36		
			21						42			38		
			22						44			40		
			23						46			42		
			24						48			44		
			25						50			46		

If it is determined by the Commissioner of Internal Revenue that the estate is entitled to the exemption, the executor will be notified to that effect, and his duties with respect to the tax will cease. If the evidence submitted in support of the claim is found not to be satisfactory, such further evidence will be called for, or such investigation instituted, as the Commissioner may direct. If it is determined that the estate is not entitled to the exemption, the executor will be required to file return and pay tax in the same manner as executors of other taxable estates.

[¶ 13] **Art. 11. Claims for refund.**—Prior to the passage of the Revenue Act of 1918 there was no military exemption from estate tax except with respect to the increase of rates imposed by the Revenue Act of 1917. The provision in the Revenue Act of 1918 granting the exemption is retroactive, and authorizes the refund of all estate taxes collected under the provisions of former acts from estates now entitled to the exemption. Where such taxes have been collected, the executor should file a claim for refund on Form 46, accompanied by the same evidence as is required in support of a claim for military exemption.

GROSS ESTATE: INDIVIDUAL PROPERTY.

[¶ 14] **Sec. 402.** That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

[¶ 15] **Art. 12. Character of interests included.**—This provision is designed to include all property interests of the decedent, of whatever character. It is the commonest form of taxable transfer. As a basis for tax, there must be an actual, beneficial ownership in the decedent, not a bare legal title, or one held in trust. Thus, property actually devoted to religious or charitable purposes, and placed in the name of an individual solely for convenience in administration, is not included in his gross estate. The statute also includes only property rights existing in the decedent in his lifetime and passing to his estate. It consequently does not include a right which came into existence only after the decedent's death, such as a cause of action by statute for causing the death. The proceeds of such a cause of action should not be included in the gross estate, whether payable generally to the estate or to some specified class of persons, such as the widow or children.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a contingent remainder where the contingency does not happen in the lifetime of the decedent, and the interest consequently lapses at his death. Nor should anything be included on account of a life estate in the decedent. There should be included, however, the value of an annuity payable to the decedent upon the life of a third person who survives him, and the value of an estate for the life of a person other than the decedent. For rules as to valuing such annuities and illustrations, see Article 20.

[¶ 16] **Art. 13. Specific property to be included.**—Real property owned by the decedent, when situated in the United States, should be included in the gross estate, whether the decedent was a resident or a nonresident, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Real property not situated in the United States should not be included, whether the decedent was a resident or nonresident. Where the decedent was a resident, all personal property owned by him should be included, wherever situated. Where decedent was a nonresident, so much of his personal property as was actually situated in the

United States at the time of his death should be included. For further discussion of the rules relating to the estates of nonresidents, see Article 60.

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Rent which had accrued upon real property at the time of the decedent's death, whether then payable or not, is included in the gross estate. The amount of interest accrued upon bonds on the day of death, whether payable then or subsequently, should be included. All matured coupons, whether presented for payment or not, should be included. The value of notes or other claims held by the decedent should be included, though they are canceled by his will or appear to be barred by the statute of limitations. As to the valuation of notes or claims apparently barred, see Article 15, paragraph 3. All bonds, whether federal, state, or municipal, and whether or not containing a tax-free covenant, should be included.

Dividends, whether upon preferred or common stock, should not be included unless actually declared prior to the date of death. The amount of dividends upon stock which have been declared, but not paid, must be returned where the value of the stock at the time of the decedent's death does not reflect the dividends; that is, where the death occurs after the closing of the books of the corporation and the stock consequently sells "ex dividend." Where the death occurs before the closing of the books, the value of the stock reflects the dividend, and it should not be included.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1 to stockholders of record on March 15. If the death occurred on March 10 and the market price on that day was 90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the quoted price. If the death occurred on March 20, the books have been closed and the dividend is not reflected in the selling price. Under these circumstances the dividend must be returned in addition to the quoted price of the stock; and the proper return would be stock 90, dividend \$5.

[¶ 17] Art. 14. **Value.**—The value at which property included in the gross estate is to be returned for tax purposes is the value at the time of the decedent's death. Neither depreciation nor appreciation in value subsequent to the date of death is considered. The value to be ascertained is the market, or sale, value of the property. The highest price obtainable for the property within a reasonable period of the decedent's death is the value to be included. A sale of the property, however, in order to be accepted as the criterion of value, must be made in such manner as to insure the best price obtainable under existing circumstances. This requires (a) that the sale be made as a matter of business, and not merely in order to establish value; (b) that it be made in absolute good faith, with a view to realizing as high a price as possible; and (c) that reasonable care and skill be exercised to obtain such price. If one method brings better results than another, the better method must be employed.

For example, if individual sales of property are better adapted to procure a good price than auction sales, the price obtained at an auction sale will be accepted only after reasonable effort to find individual purchasers has been made. See further on this point Article 15.

Great care must be exercised by the executor to arrive at a fair valuation of every asset of the gross estate.

[¶ 18] Art. 15. **Rules for the valuation of property.**—(1) Real estate.—Where real property has been sold, the amount received will be taken as its value provided the sale was made within a reasonable period of the decedent's death, and in such manner as to insure the highest possible price. Where no sale has been made, the criterion of value is the best price which could have

been obtained within a reasonable period of the decedent's death. The amount brought at an auction sale should be considered, but will be accepted only if it appears that there was no available method of obtaining a higher price. The assessed valuation of the property should be considered, but is not conclusive. All relevant facts and all elements of value should be considered in every case. See further the general rules laid down in Article 14.

(2) Stocks and bonds.—The value of stocks and bonds listed upon a stock exchange should be obtained by taking the mean between the highest and the lowest sale price upon the day of death, provided the sales were made in the regular course of business, and not for the special purpose of establishing value. If there were no sales upon the date of death, the price nearest to that date, and within a reasonable period thereof, either before or after death, should be taken. Such sale price obtains irrespective of the number of shares held by the estate. If the security was listed upon more than one exchange, the records of the exchange where the security is principally dealt in should be employed. If the decedent died on Sunday or a legal holiday, the business of the previous day will govern.

If the stock is not listed upon an exchange, but is dealt in actively by brokers or has other active market, the latest sale price prior to the day of death will govern. If there is no active market for the stock and no sales of it have been made within a reasonable period of the decedent's death, and in particular where it is closely held (stock of a "close corporation"), return should be made upon the basis of the value of the stock, as evidenced by the clear value of the excess of the assets of the corporation over its liabilities, and its earning capacity for the five years preceding the death of the decedent. Where the earnings of the corporation have been greater than a fair return on its invested capital, computed according to the nature of the business, and where the business is a going business, there should be added to the net value of the other assets of the business the value of the good will, computed in accordance with sound accounting principles. Where the earnings of the corporation have been less than a fair return on the invested capital, if the difference is material and the decreased earnings affect value, the net worth of the corporation as disclosed by its balance sheet may be adjusted on a reasonable basis to allow for this decreased value. In all cases where stock of this character forms a principal asset, there should be submitted with the return, Form 706, a copy of the balance sheets for the five preceding years, and of the balance sheet on the day of death or the nearest date thereto, together with a statement of the net earnings of the invested capital for the preceding five years.

The full value of securities pledged to secure a loan should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent held by the broker at the date of death must be included at their market value on that date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their market value on the day of death. The amount of the decedent's indebtedness to the broker will be allowed as a deduction from the gross estate. (See Art. 45.)

(3) Notes, secured and unsecured.—Notes, whether secured or unsecured, will be presumed to be worth their full face value, plus accrued interest to the date of decedent's death, unless the executor establishes the right to return them at a lower valuation. Interest should be computed upon the basis of 365 days to the year. In the case of an unsecured note it must be shown by satisfactory evidence, in order to justify failure to include it, that the note is uncollectible, either in whole or in part, from the maker or other parties to the note, on account of the insolvency of the parties thereto, or other cause. Where the

note is secured it must also be shown that the security is insufficient to satisfy it. Where a note appears to be barred by the statute of limitations its value must be included in the gross estate in the absence of proof that the liability has not revived by promise to pay or part payment, and also that the parties liable refuse to pay the debt and intend to assert the defense.

(4) Cash on hand or on deposit.—Bank deposits should be returned at the amount for which the bank would be liable if the deposit were withdrawn upon the date of the decedent's death. Interest which the bank agreed to pay upon condition that the money remain on deposit after the death should not be included.

(5) Interest in business.—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the date of death should be made of all the assets of the business, tangible and intangible, and the business should be given a net worth equal to the amount a financially competent buyer, whether an individual or corporation, might be expected to pay at a normal sale in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases where the decedent has not for a fair consideration in money or money's worth, agreed that his interest therein shall pass at his death to his surviving partner or partners.

(6) Patents, trade-marks, and copyrights.—The basis for valuation of intangible assets of this character is the present worth of the estimated future earnings of the exclusive right during the rest of its existence. The return received by the decedent should be considered in estimating future earnings.

(7) Accounts receivable, claims, judgments, etc.—A fair valuation for assets of this character at the time of death should be fixed by the executor according to the best information available to him at the time of making return. A right of action which died with the decedent should not be included in the gross estate.

(8) Furniture, personal effects, and other tangible property.—For the method of valuation to be employed in the case of household furniture and personal effects see Articles 16 to 19. With respect to all other tangible property the executor should endeavor to arrive at the sound and actual value at the day of death. Where such property is subsequently sold the sale price must be returned if the sale was a bona fide sale and for the best price obtainable. In the case of growing crops the executor should ascertain from expert opinion what the value of the growing crop was on the day of death, as evidenced by subsequent yield and crop prices. Where the crop is matured the value is the value of the crop unit on the day of death for the entire yield, less the cost of harvesting and marketing. Where the crop is not matured these factors should be considered; and the opinion of those expert in such matters should be ascertained as to what the crop was reasonably worth as a growing crop on the day of death.

[¶ 19] Art. 16. **Appraisal of household and personal effects—General provisions.**—Executors and administrators are required to have careful appraisal made of all household and personal effects of the decedent, and to furnish in duplicate detailed lists and affidavits in the manner directed below. No distribution of such effects may be made until the lists and affidavits have been filed with the collector, and, if deemed necessary, sufficient time afforded the Bureau to have personal inspection made by an official appraiser. Where it is desired to distribute or sell all the property in advance of the filing of the return, the lists and affidavits should be filed with the collector, together with a letter stating when it is desired to effect distribution. If personal inspection by an internal-revenue officer is not deemed necessary, a waiver of such examination will be sent to the executor, who may thereupon proceed with distribution.

[¶ 20] Art. 17. **Same—When value is less than \$2,000.**—When the value of the personalty involved is less than \$2,000, the detailed lists may be prepared by the executor personally. A room by room appraisal is desirable; and all the articles should be named specifically, except those of small value, such as common bric-a-brac or cheap books. A separate value should be given for each article named, except that the values of a number of articles contained in the same room may be grouped. The value of an article worth more than \$50 should be stated separately. Such an entry as the following would be acceptable:

Dining room: Table, six chairs, three pictures (common prints), value \$75; sideboard, \$60; total, \$135.

If there should be included in the lot, however, jewelry or silverware of more than ordinary value, or articles having a marked artistic value, the executor must furnish an appraisal by persons thoroughly qualified by training and experience to judge of the value of such articles.

In the case of effects having a total value of less than \$2,000, the executor may furnish as an alternative requirement a sworn estimate in duplicate of the approximate total value of the property by a professional appraiser of recognized standing and ability, or by a dealer in the class of personalty involved.

In addition to the lists or estimates described above, the executor must furnish in duplicate his affidavit as to the completeness of the lists and the qualifications of the appraiser.

[¶ 21] Art. 18. **Same—When value is more than \$2,000.**—When the value of the effects is more than \$2,000, detailed lists must be furnished, prepared by professional appraisers of recognized competence, or by dealers in the particular classes of personalty involved. The lists must be prepared in the same detail as that indicated above for the executor's list. Where the personalty includes jewelry, silverware, or like articles, except in cases where the value of these items is insignificant, the appraisal of a reputable dealer or appraiser of jewelry must be furnished.

In the case of articles having marked artistic value, such as paintings, engravings, etchings, statuary, vases, oriental rugs, or antiques, the appraisals of experts will be required. The description of such articles should be fully given. Where paintings having artistic value are listed, the size, subject, and artist should be named. In the case of oriental rugs, the size, make, age, etc., should be given. The weight in ounces of each article of silverware should be stated. With the duplicate lists there must be filed the executor's affidavit as to the completeness of the list and the qualifications of the appraisers.

[¶ 22] Art. 19. **Same—Appraisers and basis of appraisals.**—Where expert appraisers are to be employed, care should be taken to see that they are men of recognized competence with respect to the particular class of property

involved. In order to facilitate the acceptance of the appraisal, appraisers should be employed whose competence is well established.

The basis to be employed in appraising articles of this character is what they would bring at a bona fide sale to individual purchasers, to dealers, or upon a well-advertised auction sale. If there has been an actual bona fide sale, the amount received may be returned as the value of the property. Where property is valued by legatees for purposes of distribution, such value will not necessarily be accepted. The original cost of the articles is not necessarily a proper basis, on account of depreciation or appreciation in value.

[¶ 23] T. D. 2529. Personal property and household effects when presumed property of husband.—In reviewing returns on Form 706 in this office, it is found that oftentimes there are reported no household goods or other miscellaneous personalty of that character. This fact is brought to the attention of the examining officer, and in most cases results in the discovery of the existence of such property belonging to the estate of the decedent. In other cases the examining officers have been reporting the substance of the following: "Widow of deceased claims the household effects, etc., as her own separate property."

Statements to the above effect, unexplained, are not sufficient to relieve the estate from returning and paying tax upon the household furniture used by the decedent in the household occupied by himself and wife. Upon the decease of a husband the household goods and other chattels used by husband and wife in the marriage relation are presumed to be the property of the husband. If the wife claims the same as her separate property she has the burden of establishing that claim.

There are certain situations where the widow's claim will not be questioned and will consequently relieve the estate from returning the household goods as part of the gross estate of the deceased husband. All that is required in such cases is sufficient evidence of the existence of the facts in question. Such situations are as follows: (1) Where the articles of household furniture were owned by the wife prior to marriage; (2) where the wife has purchased the household effects during coverture with her separate funds; (3) where the household effects represent gifts from a third person to the wife individually during coverture.

It is not at all uncommon, however, that the household effects have been purchased by the husband since the marriage and at his death the wife claims that the decedent made her a gift of the various articles during the marriage, although the articles have never left the possession of the husband; i. e., they remain in the household occupied by the husband and wife and are used by them jointly. Such property is presumed to be owned by the husband, and if the wife, or any other person for that matter, claims the household effects as a gift from the deceased the burden of proving the gift rests upon the person asserting it. A gift from husband to wife must be clearly established. There must be clear and incontrovertible evidence of the delivery of the property by the husband with the intention of divesting himself of all dominion and control and of vesting title in the wife. The requirements necessary to a valid executed gift must be present. If the gift be in contemplation of death, of course another question would arise.

The following proposition has been announced by the courts, and is believed by this office to be sound: To constitute a valid gift there must be an absolute transfer of the property from donor to donee, taking effect immediately, and fully executed by a delivery of the property by the donor, and the acceptance thereof by the donee. It is essential that the transaction should be

fully executed by the delivery of the property to the donee, or to some person for him. In several States statutes have been enacted providing that no gift, except by deed or will, shall be valid unless actual possession shall come to and remain with the donee or his agent, and if the donor and donee reside together at the time of the gift, possession by the donee at their place of residence is not a sufficient possession within the meaning of the statute.

The foregoing should be carefully considered when examining officers are investigating the completeness and accuracy of estate tax returns. (T. D. 2529, Oct. 4, 1917.)

[¶ 24] Art. 20. Valuation of annuities, life, and remainder interests.—

Where the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, and the right constitutes an asset of his estate, the present worth of the annuity at the time of the decedent's death must be computed upon the basis of the expectancy of life of the other person. The table marked "A" in this article should be used for this computation. The amount of annual income should be multiplied by the figure in column 3 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to the table the figure in column 3 opposite 41 years, the number nearest to the brother's age, is found to be 14.86102. The present worth of the annuity is, therefore, \$148,610.20.

Where the decedent was entitled to receive the annuity during a specified number of years, the table marked "B" in this article should be used.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for a period of 20 years, 15 of which had expired at the decedent's death. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

Where the decedent was entitled to receive the entire income of certain property during the life of another or for a term of years, and where the rate of income is fixed by the instrument creating the trust or is definitely determinable at the time of the decedent's death, the average annual income which the property actually yields should be determined, and its present worth computed, as explained above, in the case of annuities.

Example: The decedent's father placed \$100,000 in trust, with directions that it be invested in state and municipal bonds and the entire income paid to the decedent during the life of his elder brother, who was 41 years old at the decedent's death. Before the decedent's death the money was invested in state and municipal bonds, and actually yielded a net return of \$5,000 per annum. In this case the rate of income is definitely determinable. By reference to the table it is found that the present worth of an income of \$5,000, dependent upon the life of a person 41 years of age, is \$74,305.10 (14.86102 multiplied by 5,000).

Where the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation.

Example: The decedent died before a fund of \$100,000, of which he was entitled to receive the income during the life of a person 41 years old, had been invested by the trustees. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08.

Where the decedent possessed a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 4 of Table A opposite the number of years nearest to the age of the life tenant. Where the remainder interest is subject to an estate for a term of years Table B should be used.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years old. By reference to the table it is found that the figure in column 4 opposite 31 years is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.

TABLE "A"

Table, single life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest.

1	2	3	4	1	2	3	4
Age	Expect- ancy of life	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of spec- ified age	Age	Expect- ancy of life	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of spec- ified age
		Annuity	Reversion			Annuity	Reversion
0	23.179	\$14.72829	\$0.39507	51	17.527	\$12.17919	\$0.49311
1	20.552	17.20771	.29586	52	16.947	11.88408	.50446
2	35.626	18.69578	.24247	53	16.372	11.58531	.51595
3	37.572	19.15601	.22465	54	15.804	11.28325	.52757
4	38.702	19.41226	.21491	55	15.243	10.99789	.53931
5	39.352	19.55301	.20950	56	14.689	10.67982	.55116
6	39.654	19.61731	.20703	57	14.143	10.35931	.56310
7	39.691	19.62502	.20673	58	13.603	10.04630	.57514
8	39.625	19.61097	.20727	59	13.072	9.73131	.58726
9	39.264	19.53413	.21022	60	12.549	9.41474	.59943
10	38.891	19.45359	.21332	61	12.029	9.09765	.61163
11	38.507	19.36943	.21656	62	11.532	8.78052	.62382
12	38.113	19.28184	.21993	63	11.039	8.46412	.63600
13	37.710	19.19065	.22344	64	10.557	8.14888	.64812
14	37.298	19.09590	.22708	65	10.088	7.83552	.66017
15	36.877	18.99764	.23086	66	9.630	7.52476	.67212
16	36.447	18.89569	.23478	67	9.185	7.21699	.68396
17	36.010	18.79010	.23884	68	8.753	6.91298	.69565
18	35.565	18.68070	.24305	69	8.333	6.61301	.70719
19	35.113	18.56751	.24740	70	7.926	6.31716	.71857
20	34.652	18.45038	.25191	71	7.532	6.02612	.72976
21	34.186	18.32932	.25656	72	7.151	5.74003	.74077
22	33.711	18.20416	.26138	73	6.782	5.45928	.75157
23	33.230	18.07471	.26636	74	6.425	5.18402	.76215
24	32.742	17.94097	.27150	75	6.081	4.91463	.77251
25	32.243	17.80274	.27682	76	5.749	4.65125	.78264
26	31.747	17.65984	.28231	77	5.428	4.39383	.79254
27	31.239	17.51224	.28799	78	5.119	4.14286	.80220
28	30.725	17.35968	.29386	79	4.823	3.89858	.81159
29	30.205	17.20225	.29991	80	4.537	3.66071	.82074
30	29.678	17.03961	.30617	81	4.262	3.42900	.82965
31	29.147	16.87176	.31262	82	3.995	3.20258	.83836
32	28.608	16.69846	.31929	83	3.737	2.98024	.84691
33	28.067	16.51964	.32617	84	3.484	2.76106	.85534
34	27.516	16.33503	.33327	85	3.236	2.54366	.86371
35	26.961	16.14437	.34060	86	2.992	2.32795	.87200
36	26.401	15.94755	.34817	87	2.752	2.11384	.88024
37	25.834	15.74427	.35599	88	2.517	1.90115	.88842
38	25.263	15.53421	.36407	89	2.286	1.69107	.89650
39	24.685	15.31722	.37241	90	2.062	1.48540	.90441
40	24.101	15.09295	.38104	91	1.845	1.28432	.91214
41	23.511	14.86102	.38996	92	1.637	1.09024	.91961
42	22.915	14.62122	.39918	93	1.442	.90647	.92667
43	22.313	14.37356	.40871	94	1.263	.73687	.93320
44	21.708	14.11860	.41852	95	1.103	.58435	.93906
45	21.103	13.85713	.42857	96	.975	.46182	.94378
46	20.499	13.58958	.43886	97	.877	.36698	.94742
47	19.896	13.31698	.44935	98	.746	.24038	.95229
48	19.298	13.03942	.46002	99	.500	.00000	.96154
49	18.703	12.75716	.47088				
50	18.113	12.47032	.48191				

TABLE "B"

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	Annuity	Reversion		Annuity	Reversion
1	\$0.96154	\$0.961538	16	\$11.65229	\$0.533908
2	1.88609	.924556	17	12.16567	.513373
3	2.77509	.888996	18	12.65929	.493628
4	3.62989	.854804	19	13.13394	.474642
5	4.45182	.821927	20	13.59032	.456387
6	5.24214	.790314	21	14.02916	.438834
7	6.00205	.759918	22	14.45111	.421955
8	6.73274	.730690	23	14.85684	.405726
9	7.43533	.702587	24	15.24696	.390121
10	8.11089	.675564	25	15.62203	.375117
11	8.76047	.649581	26	15.98277	.360689
12	9.38507	.624597	27	16.32958	.346816
13	9.98565	.600574	28	16.66306	.333477
14	10.56312	.577475	29	16.98371	.320651
15	11.11839	.555265	30	17.29203	.308319

DOWER AND COURTESY.

[¶ 25] (Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy;

[¶ 26] Art. 21 (as amended by T. D. 3165). **Dower and courtesy.**—This provision includes dower and courtesy and all interests created by statute in lieu thereof, although the estate or interest so created is different in character. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife. This rule does not apply to the estate of any decedent dying after September 8, 1916, and prior to 6:55 p. m., February 24, 1919 (the effective date of Title IV of the Revenue Act of 1918), unless the property has its situs in a jurisdiction wherein dower, courtesy, or the statutory interest in lieu thereof, is subject to the payment of charges against the estate, the expenses of its administration and is subject to distribution as part of the estate, or unless there has been an election to take property devised or bequeathed in lieu of dower, courtesy, or such statutory interest, and the property so taken has its situs in a jurisdiction by the laws of which it is subject to the payment of such charges and expenses, and to distribution as a part of the estate. (T. D. 3165, approved May 18, 1921.)

TRANSFERS BY DECEDENT IN HIS LIFETIME.

[¶ 27] (Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

[¶ 28] Art. 22. **Nature and time of transfer.**—A transfer made by the decedent in his lifetime, if made by way of gift, is taxable when made in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of the transferor. No distinction is made between ordinary

transfers and transfers involving the creation of a trust. Where a transfer, however, constitutes a bona fide sale for a fair consideration in money or money's worth, it is not taxable. In order to constitute such a bona fide sale, there must be a valuable consideration, as distinguished from love and affection. A sale implies the receipt of a price, in money or thing of value. The release of an existing claim, by way of accord and satisfaction, is not sufficient. The price must also be a fair equivalent for the property transferred. Where the price is not a fair one, the sale will not be considered to have been made bona fide. Such transfers are taxable whether made before or after September 8, 1916.

TRANSFERS IN CONTEMPLATION OF DEATH.

[¶ 29] Art. 23. **Nature of transfer.**—The words “in contemplation of death” do not refer to the general expectation of death which all persons entertain. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem proper objects of their bounty. The cause which induces such bodily or mental conditions is immaterial; and it is not necessary that the decedent be in the immediate expectation of death. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession of the property. Transfers made within two years of a decedent's death are presumed to be taxable if they are of a material part of his property and are in the nature of a final disposition thereof. Where a transfer is of this character, the executor must disclose the transfer in the return; but he may submit therewith evidence that it was not made in contemplation of death. The executor must also return transfers by the decedent of a material part of his property to relatives, though made more than two years before his death; but he need not list them as taxable if he contends otherwise. All facts relating to the transfer should be stated, including the motive therefor, the decedent's state of health, and his anticipation of death. The presumption of taxability may be rebutted by proof that the transfer was not induced by bodily or mental conditions leading the grantor to make a disposition of property testamentary in its nature. The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not enough, standing alone, to establish taxability; but it is a circumstance to be considered in determining whether the transfer was made in contemplation of death.

Note: For discussion upon the question when transfers are “in contemplation of death,” see decision of U. S. Circuit Court of Appeals, Sixth Circuit, in the case of *Shwab vs. Doyle*, decided Dec. 10, 1920, where the federal estate law in the Act of 1916 was involved. This decision is published by the Treasury Department in T. D. 3119, not as a ruling but for information only. (For analysis of the decision see Bull. No. 5, Rewrite Section, Income Tax Vol.)

Note: In the case of *Gaither vs. Miles*, 268 Fed. Rep. 692, U. S. District Court Judge Rose in the District Court of Maryland, on October 23, 1920, held that an absolute assignment of certain life insurance policies by a testator at the age of 83 years to his son and daughter, made without consideration with no reservations about two months prior to his death, was not made in “contemplation of death.” The court stated as a reason for the decision that the care of testator to reserve to himself a life estate in certain warehouses and to provide that if he were living 19 months later when his endowment policy matured, what would then be due should be payable to him, tended to show that in the summer of 1919 he was not in the expectation of immediate death. The

court held that the transfer of another policy by decedent to the son and daughter, wherein he reserved the right to again change the beneficiaries, required that such policy be considered as part of the estate and subject to tax.

TRANSFERS INTENDED TO TAKE EFFECT AT OR AFTER DEATH.

[¶ 30] Art. 24. **Reservation of income.**—A transfer is taxable where the grantor reserves to himself during life the income of the property transferred. In such a case the transfer of the principal takes effect in possession and enjoyment after the death of the grantor, and the value of the entire property should be included in the gross estate. Where the grantor reserves a proportionate part of the income, only a corresponding proportion of the property should be included in the gross estate, unless the transfer was made in contemplation of death. If, for example, he reserves one-half of the income, the value of one-half of the property transferred should be included in the gross estate. If he reserves an annuity, so much of the property as is necessary to produce the annuity should be included in the gross estate. Where the property does not produce income, its value as of the date of the decedent's death should be ascertained, and so much of this sum as is necessary to produce the annuity should be included in the gross estate. A transfer is taxable in accordance with these principles whether the grantor makes a reservation of the annuity out of the property conveyed, or exacts from the grantee an agreement to pay the annuity. A gift of the principal of a trust fund which takes effect at or after the decedent's death is taxable although the income during the decedent's life is payable to some one other than himself. Example: The decedent transfers property to his son, the latter agreeing to pay the income to his mother during the decedent's life. The transfer to the son is taxable.

Note: With respect to transfers made before the passage of the act and intended to take effect in possession or enjoyment at or after death, the Treasury Department in T. D. 3151, dated April 2, 1921, published for the information of internal revenue officers and others concerned the decision of the U. S. District Court for the Northern District of California, in the case of Union Trust Co. of San Francisco et al. vs. Wardell.

This decision relates to Secs. 201 and 202 of the Act of September 8, 1916, and their applicability to a transfer made by decedent by declaration of trust, assigning certain shares of stock to trustees with directions to pay the income therefrom to her during her life and at her death to deliver the stock to certain relatives. The trust agreement was executed May 31, 1901, and her death occurred November 14, 1916. Suit was brought by the executors to recover \$4,545.20 paid as tax on the above transfer, under protest.

The court held that the questions raised by counsel for plaintiffs were determined adversely to them by the Circuit Court of Appeals in the case of Shwab Executor vs. Doyle (pars. 29 War Tax Service and 4157-4160 of Income Tax Service, Rewrite Section.)

In sustaining the demurrer of the Government the court held the rule, applied in the Shwab case, taxing the transfer made in contemplation of death, would apply in the instant case on the transfer intended to take effect in possession or enjoyment at or after death; that the act was intended undoubtedly to operate retrospectively, and that on the question of constitutionality the decision of the Appellate Court should at least raise a doubt as to its invalidity sufficient to warrant him in sustaining the demurrer.

[¶ 31] Art. 25. **Power of revocation or control.**—Property held in trust under any instrument in which the grantor has reserved a power of revocation, or any power which has that effect constitutes a part of the gross estate of such grantor for the purposes of this tax. For example, where a father places prop-

erty in trust for the present benefit of his son, but reserves power to revoke the trust at any time during his life, the value of the entire property transferred should be included in the gross estate.

[¶ 32] Art. 26. **Valuation of property transferred.**—The property to be valued is the interest owned and transferred by the decedent; but the value of such property must be ascertained as of the date of the decedent's death. Where the transferee makes additions to the property, or betterments, the value of the additions or betterments at the time of death are not to be included. For example, a father makes a transfer to a son, in contemplation of death, of unimproved real estate valued at \$20,000. The son erects buildings on the land at a cost of \$10,000. The amount to be included in the gross estate of the father is the value of the entire property at the time of his death less the value of the buildings on that date.

PROPERTY HELD JOINTLY.

[¶ 33] (Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in the joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent;

[¶ 34] Art. 27. **Property held jointly or as tenants in the entirety.**—The statute provides for the taxation of interests held jointly, or as tenants in the entirety, by the decedent and any other person or persons. This class of property includes all interests, whether in real or personal property, in which the survivor takes the entire property by right of survivorship, and it consequently does not form part of the decedent's estate for purposes of administration. It does not include interests held as tenants in common, where the interest of each tenant passes to his estate, free from any right of survivorship.

The following are examples of this class of property: Real estate held jointly; real estate held by husband and wife (known as an estate in the entirety); money deposited in a bank or trust company in the joint names of the decedent and another and payable to either or the survivor; joint trading accounts with brokers; stocks and bonds held in the joint names of several owners.

Note: The surviving tenant's original half interest in a joint-tenancy created prior to the enactment of the statute is not a part of the decedent's gross estate, according to a decision of District Judge Mayer in the U. S. District Court, Southern District of New York, in the case of *Kissam Estate vs. McElligott*, Coll. This decision was rendered December 29, 1920, and the provisions of the Act of 1916, as amended by the Act of 1917, were involved.

Note: Community property.—In T. D. 3138 it is held with respect to community property in certain states which have so-called community property laws, that in Washington, Arizona, Idaho, New Mexico, Louisiana, Nevada and Texas there should be included in gross estate in computing the estate tax of a deceased spouse, one-half of the community property of husband and wife domiciled therein; this is not based upon any statute enacted subsequent to March 1, 1913, and applies under Estate Tax Acts prior to the Revenue Act of 1918. The application of the federal estate tax act of 1916 under the law of California is under consideration in the case of *Blum vs. Wardell*, pending in the Circuit Court of Appeals of the Ninth Circuit. The view of the Attorney General is that under the law of California the entire community property is a part of the estate of the husband and one-half passes to the wife as heir while

upon the death of the wife her estate includes none of the community property which all belongs to the husband without administration. The decision does not expressly determine under the laws of any of the states mentioned what is community property and what is separate property, merely quoting the statutes and court decisions which deal with this subject.

For reprint of the Treasury Decision in full see pars. 4240-4246 of Rewrite Section, Vol. I, Unabridged Service.

[¶ 35] Art. 28. **Taxable portion.**—The value of such property to be returned for tax is the value of the entire property, unless it can be shown that part of it originally belonged to the other joint owner and never belonged to the decedent. In order to exclude any part of such property from the gross estate the executor must show an original contribution of value by some person other than the decedent. If such a contribution can be established, the proportion thereof to the entire purchase price represents the interest in the property which should be excluded from the gross estate. Three cases may arise: (1) The decedent may have paid the entire purchase price, in which case the entire property should be included; (2) the decedent may have paid only a portion of the purchase price, in which case only a corresponding portion of the property should be included; (3) the decedent may have paid no part of the purchase price, in which case no part of the property should be included. In the case of bank deposits, the same rule applies; that is, the interest of the decedent in the account is determined by the amount of his contribution. For example: An account of \$1,000 is opened, of which the decedent contributes one-half. Interest of \$40 has accumulated at the time of the decedent's death,

and nothing has been withdrawn. Under these facts \$520 should be included in the gross estate.

[¶ 36] Art. 29. **Husband and wife.**—Property owned by husband and wife as tenants in the entirety is governed by the rule given above. The whole value of the property must be included, in the absence of a showing as to the original contributions. An exception is made, however, where property is conveyed to husband and wife without valuable consideration, or where the property was purchased out of common funds, representing the savings of husband and wife, or was the fruit of joint labor, the proportion of the several contributions having been lost sight of. In such cases one-half of the total value of the property should be returned.

PROPERTY PASSING UNDER POWER OF APPOINTMENT.

[¶ 37] (Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

[¶ 38] Art. 30. **General rules.**—As a general rule, property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor) where the power is exercised by will, or by deed executed in contemplation of death, or intended to take effect at or after death. This general rule applies wherever the decedent died after September 8, 1916, although the power was created prior to that date. In certain cases, however, the transfer is taxable under the Revenue Act of 1918 when it would not be taxable under the Revenue Act of 1916 (see Art. 31).

Only property passing under a general power should be included. A general power is one to appoint to any person or persons in the discretion of the donee. Where the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. Property appointed under a general power should be included in the estate of the appointor, although the persons to whom the appointment was made would have taken the property had the power not been exercised. A copy of the instrument granting the power should be filed with Form 706 in all cases in order that the Bureau may determine whether the power is general or special.

Example: The income of property is left to a person for life, with the right to name in his will the person who shall receive it upon his death. He exercises this power in his will. Upon his death, if occurring after September 8, 1916, the property so appointed should be included in his gross estate.

[¶ 39] Art. 31. **Special rules—Powers exercised before and after February 25, 1919.**—The Revenue Act of 1918 taxes all transfers effected by the exercise of a general power of appointment, provided the exercise was by will, or by deed made in contemplation of death, or intended to take effect at or after death. It follows that all transfers of this character, where the decedent died after February 24, 1919, are taxable, and the property must be included in the gross estate.

Where the decedent died between September 8, 1916, and February 25, 1919, the taxability of the transfer depends upon whether the property was subject to the claims of the creditors of the appointor, in preference to the person or persons in whose favor the power was exercised. The general rule is, that the property is so subject; and it should consequently be included in the gross estate unless this rule has been abrogated in the State whose laws

determine the nature and effect of the transfer. All such transfers should be disclosed to the Bureau in order that it may pass upon the question of taxability.

Note: In interpreting the provisions of Sec. 202 (a) and (b) of the Revenue Act of 1916, as amended by the Act of 1917, the U. S. Supreme Court, in the case of U. S. vs. Stanley Field, executor of estate of Kate Field, deceased (Case No. 442—Oct. Term, 1920), held that the gross estate does not include, under said act, an interest passing under testamentary execution of a general power of appointment.

The above decision has no bearing on the Act of 1918, since it purports simply to interpret the provisions of the prior Act. The 1918 Act expressly includes in gross estate such an interest. (See par. 4294 of Rewrite Service.)

INSURANCE.

[¶ 40] (Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

[¶ 41] Art. 32. **Taxable insurance.**—The statute provides for the inclusion in the gross estate of certain forms of insurance taken out by the decedent upon his own life. Two kinds of insurance are taxable: (a) all insurance payable to the estate; (b) insurance payable to individual beneficiaries to the extent that it exceeds \$40,000. The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is deemed to be taken out by the decedent in all cases where he pays the premiums, either directly or indirectly, whether or not he makes the application. On the other hand, the insurance should not be included in the gross estate, even though the application is made by the decedent, where the premiums are actually paid by some other person or corporation, and not out of funds belonging to, or advanced by, the decedent. Where the decedent takes out insurance in favor of another person or corporation, as collateral security for a loan or other accommodation and the decedent, either directly or indirectly, pays the premiums thereon, the insurance must be considered in determining whether there is an excess over \$40,000. Where the decedent assigns a policy, and retains no interest therein, and thereafter pays no part of the premiums, the insurance will not be considered in determining whether there is such a taxable excess.

[¶ 42] Art. 33. **Insurance in favor of the estate.**—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any deduction, applies to policies made payable to the decedent's estate or his executor or administrator, and all insurance, regardless of the manner of execution, which is in fact receivable by the estate, or which must be used to pay charges against the estate or the expenses of administration. This provision includes insurance taken out to provide funds to meet the estate tax, state inheritance taxes, or any other legal charge upon the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of the charge.

[¶ 43] Art. 34. **Insurance receivable by other beneficiaries.**—The estate is entitled to only one exemption of \$40,000 upon insurance payable to beneficiaries other than the executor. For example, if the decedent left life insurance payable to three persons in amounts of \$10,000, \$40,000, and \$50,000

(total, \$100,000), the amount of \$60,000 should be returned for taxation, which is the excess of the sum of the three policies over the exempted amount. The word "beneficiary," as used in reference to the \$40,000 exemption, means a person entitled to the actual enjoyment of the insurance money.

[¶ 44] Art. 35. **Effective date of insurance provisions.** — Insurance receivable by the executor must be included in the gross estate of all decedents who died after September 8, 1916. Insurance payable to beneficiaries other than the executor, however, need not be included in the gross estate of decedents who died before February 25, 1919, the effective date of the Revenue

Act of 1918, unless the insurance was originally payable to the estate, and was transferred by the decedent to specific beneficiaries in contemplation of death.

[¶ 45] **Art. 36. Valuation of insurance.**—The amount to be returned in the case of any policy is the amount actually receivable by the executor or beneficiary. In cases where the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, the present worth of the annuity at the time of death should be included in the gross estate. For the method of computing the value of such an annuity, see Article 20. Where the insurance contract gives an option to receive a fixed sum of money in lieu of an annuity, this sum, if accepted, represents the value of the insurance for the purpose of the tax. If such sum is not accepted the value of the annuity is to be included in the gross estate. Where there is more than one option, and none of them is convertible, the value of the insurance should be determined in accordance with the option actually exercised.

DEDUCTIONS.

[¶ 46] **Sec. 403.** That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

[¶ 47] **Art. 37. Deductions in the case of resident estates.**—In the case of the estates of residents, the deductions are made from the value of the entire gross estate, wherever situated. The deductions specified in the above provisions, contained in the Revenue Act of 1918, are proper in all cases where the decedent died on or after February 25, 1919. Where the decedent died prior to February 25, 1919, the case is governed by the provisions of the Revenue Act of 1916, which permits the following deductions:

- (1) Funeral expenses.
- (2) Administration expenses.
- (3) Claims against the estate.
- (4) Unpaid mortgages.
- (5) Losses from casualty or theft.
- (6) Support of decedent's dependents.
- (7) Other charges against the estate.
- (8) Specific exemption of \$50,000.
- (9) In the case of decedents dying after December 31, 1917, public, religious, charitable, scientific, literary, and educational bequests.

The provision in the Revenue Act of 1916 for the deduction of "such other charges" than those previously specified as may be allowed by the laws of the jurisdiction is omitted in the Revenue Act of 1918. Consequently, in the case of estates of all persons dying after February 24, 1919, the executor, in order to obtain a deduction, must bring the item within one of the classes specifically described.

[¶ 48] **Art. 38. General provisions relating to deductions.**—In order to be deductible, the item must be of the character described in the statute; and it must also be one the payment of which out of the estate is allowed by the law of the jurisdiction administering it. Where the item is not one of those described, it is not deductible merely because payment is allowed by the local law. On the other hand, no item is deductible unless payment is so allowed. It must appear in every case either that payment of the item has been made, or that such payment is clearly contemplated. Where the amount which may

be expended for the particular purpose is limited by the local law, no deduction in excess of such limitation is permissible. Where the local courts have approved the expenditure it will ordinarily be allowed for deduction. (See Art. 39.) Where the disbursement has not been made, the item may be entered for deduction where the amount is certain, and it appears satisfactorily that it will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Where an uncertain or contingent liability, not allowed as a deduction, becomes fixed, and payment is made, the remedy is a claim for a refund of the excess tax.

[¶ 49] **Art. 39. Effect of court decree.**—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted where the court passes upon the fact upon which deductibility depends. Where the court does not pass upon such fact its decree will, of course, not be followed. For example, where the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing that the claim is valid and the amount of it. Where, however, a legacy is left to an executor in lieu of commissions, the allowance of the legacy does not establish that the executor's claim for commissions is equal to the amount bequeathed and that this amount is consequently deductible. (See Art. 42.) Nor will the decree necessarily be accepted even where it purports to decide the fact upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases where there is an active and genuine contest. Where the result reached appears to be unreasonable, this is some evidence that there was no such a contest, but it may be rebutted by proof to the contrary. Where the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, where it is made by all parties having an interest adverse to the claim, when all aspects of the matter, including its effect upon taxation, are considered. The decree will not be accepted where it appears to be at variance with the law of the State; as, for example, if an allowance is made to an executor in excess of the rate prescribed by statute.

[¶ 50] **Art. 40. Funeral expenses.**—An executor may deduct such amounts for funeral expenses as are actually expended by him, provided expenditures of this nature are a liability of the estate under the laws of the local jurisdiction. A reasonable expenditure by the executor for a tombstone, monument or mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is made a charge upon the estate by the local law. Included in funeral expenses is the transportation of the person bringing the body to the place of burial.

[¶ 51] **Art. 41. Administration expenses.**—The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; (3) miscel-

laneous expenses. Each of these classes is considered separately. (See Arts. 42 to 44.)

[¶ 52] Art. 42. **Executor's commissions.**—No amount may be deducted as executor's commissions in excess of that actually paid or to be paid, and in no case in excess of the amount allowable by the law of the jurisdiction wherein the estate is being administered. If at the time of filing the return the commissions of the executor have not been allowed or awarded by the court or tribunal having jurisdiction in the premises, the commissions may nevertheless be entered on the return and claimed as a deduction, subject to future allowance or disallowance by the Commissioner, provided: (1) That the amount entered and claimed is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; (2) that such amount is in accordance with the usually accepted practice in such cases within said jurisdiction; and (3) that it may reasonably be expected that the said amount will be paid within one year and 180 days after the decedent's death. Except in those cases in which the commissions have been both awarded and paid, the Commissioner may at any time require the executor to furnish satisfactory evidence of his right to take or claim the deduction. Whenever it shall appear to the Commissioner that the commissions claimed but not awarded, whether paid or unpaid, exceed the amount allowed by law or exceed the amount usually allowed within the commonly accepted practice of the jurisdiction wherein the estate is being administered, or where in any case the Commissioner finds after the lapse of 1 year and 180 days after the decedent's death that the commissions have not been paid, the deduction will be disallowed, subject to the right of the executor thereafter in a proper case to file a claim for abatement or refund as he may be advised, when the commissions shall have been actually awarded and paid. Where the executor does not intend to make any charge upon the estate for his services, no deduction may be claimed.

No deduction may be made for trustees' commissions, and an executor who acts as trustee is not entitled to deduct the commission he receives for his services in the latter capacity. The executor's duties are complete when he has turned over the estate or the proceeds to the persons entitled thereto. Such persons may be beneficiaries entitled to receive the property in their own right, or trustees entitled to receive it in the right of their *cestuis que trustent*. The service of the trustees are distinct from, and additional to, the ordinary duties of an executor in the settlement of estates; and commissions for such trustees' services do not constitute an expense of administration.

Where a bequest is made to an executor in lieu of commissions it may be deducted as an administration expense only to an amount thereof not in excess of the amount allowable as commissions by the law of the jurisdiction wherein the estate is being administered. If the legacy is in excess of such allowable commissions, the excess may not be deducted.

[¶ 53] Art. 43. **Attorney's fees.**—No amount may be deducted in any case as attorney's fees in excess of that actually paid or to be paid. If at the time of filing the return the attorney's fees have not been allowed or awarded by the court or tribunal having jurisdiction in the premises, they may nevertheless be entered on the return and claimed as a deduction, subject to future allowance or disallowance by the Commissioner, provided: (1) That the amount so entered and claimed is reasonable in consideration of the services performed and the value of the estate; and (2) that it may reasonably be expected that such amount will be paid within 1 year and 180 days after the decedent's death. Except in those cases in which the attorney's fees have been both awarded and paid, the Commissioner may at any time require the executor to

furnish satisfactory evidence of his right to take or claim this deduction. Whenever it shall appear to the Commissioner that the fees claimed were not awarded, and whether paid or unpaid, exceed a reasonable amount in the discretion of the Commissioner, or where in any case the Commissioner finds after the lapse of 1 year and 180 days after the decedent's death that the fees have not been paid, the deduction will be disallowed, subject to the right of the executor thereafter, in a proper case to file a claim for abatement or refund as he may be advised, when the fees have actually been awarded and paid. The cost of litigation instituted by the beneficiaries as to the amount of their respective interests may not be deducted, since expenses of this character are properly charges against the beneficiaries personally, rather than against the general estate.

[¶ 54] Art. 44. **Miscellaneous administration expenses.**—This item includes expenses incident to court proceedings, or the administration of the estate, such as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in distributing the estate are deductible. This includes the cost of storing or maintaining property of the estate, where it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may be deducted, but do not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible where the sale is necessary in order to pay the decedent's debts, or the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, where it is reasonably necessary to employ one.

[¶ 55] Art. 45. **Claims against the estate.**—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether then matured or not. Obligations contracted by the executor are not deductible. Only such claims as are actually enforceable against the estate may be deducted.

[¶ 56] Art. 46. **Taxes.**—Taxes upon real property should be accrued to the date of death. This is done by ascertaining the time between the first day of the taxable period wherein the death occurs and the date of death, and computing the proportion of the entire tax which this period bears to the entire taxable period. Such proportion of the tax has accrued upon the date of death, and is deductible.

Taxes upon personal property are either wholly deductible, or are not deductible at all, depending upon whether the tax did, or did not, become the personal obligation of the taxpayer in his lifetime. If the tax became his personal obligation during his life, the whole amount is deductible as a claim against his estate. If it did not become such personal obligation in his lifetime, no part of it is deductible. The question when the tax became the personal obligation of the taxpayer depends upon the law of the jurisdiction where the decedent was domiciled at the time of his death. *Prima facie*, the date when the tax became the personal obligation of the taxpayer is the date when the assessment was laid.

In the case of federal taxes upon income, the tax upon income received or accrued during the decedent's lifetime constitutes the personal obligation of the decedent, and is deductible. Taxes upon income received after the decedent's death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

[¶ 57] **NOTE:** The State Inheritance Tax paid the State of New York which reduced not the estate but the legatee's share, is not a "charge against

of *Lederer, Coll., vs. Northern Trust Co.* The Court states in this opinion that its decision has no bearing on the present estate tax law (1918), since the latter expressly provides that "estate taxes" are not deductible. The Supreme Court denied a petition for a writ of certiorari. This decision is incorporated in T. D. 3027.

[¶ 58] Art. 47. **Unpaid mortgages.**—The full amount of unpaid mortgages on property included in the gross estate should be deducted under this

the estate" allowed by the jurisdiction and is not deductible in determining the amount of the estate for purposes of the Federal Estate Tax. So held in case of *New York Trust Co. Executor, etc., estate of Purdy, Deceased, vs. Eisner* in decision of January 20, 1920, by District Court of Southern District of New York. This decision is published by the Treasury Department in T. D. 2976, not as a ruling but for information only.

In a later decision in the case of *James Sayre and Theodore L. Cross, executors of estate of Theodore S. Sayre, deceased, vs. Brewster*, Coll. the U. S. District Court for the Northern District of New York, where the Act of September 8, 1916, was involved, it was held contrary to the holding in the aforesaid case that the New York State Transfer Tax is a deductible item in the determination of the net estate, subject to the federal estate tax. For analysis of decision see Bull. No. 5 of Rewrite Section, Income Tax Vol.)

The Pennsylvania Collateral Inheritance Tax being an estate tax, is held to be a deductible item in determining the amount of the net estate under the Federal Estate Tax of 1916. This was the decision of the U. S. Circuit Court of Appeals for the Third Circuit (No. 2496, Oct. Term, 1919) in the case of *Lederer, Coll., vs. Northern Trust Co.* The Court states in this opinion that its decision has no bearing on the present estate tax law (1918), since the latter expressly provides that "estate taxes" are not deductible. The Supreme Court denied a petition for a writ of certiorari. This decision is incorporated in T. D. 3027.

Massachusetts legacy taxes deductible from gross estate.—The District Court of the United States in the District of Massachusetts, in a decision rendered March 28, 1921, in the case of *Ruth S. Thayer, Executor, vs. John F. Malley, Coll.*, held that the Act of 1916 is constitutional; that the taxes paid to the State of Massachusetts as legacy or inheritance taxes under the statutes of that state are to be deducted before the Federal Estate Tax involved in the same estates are computed. In support of the decision on this point the Court quoted the cases of *U. S. vs. Perkins*, 163 U. S. 625, at 630; *Sayre vs. Brewster*, 268 Fed. Rep. 553 [57], and *Lederer, Coll., vs. Northern Trust Co.*, 262 Fed. Rep. 52.

[¶ 57a] **U. S. Supreme Court decision that state inheritance taxes are not deductible in arriving at net estate. (Revenue Act of 1916.)**—The U. S. Supreme Court, in a decision rendered by Justice Holmes, May 16, 1921, in the case of *New York Trust Company and Albert J. Pross, executors of the will of J. Harsen Purdy, plaintiffs in error, vs. Mark Eisner*, affirmed the decree of the U. S. District Court for the Southern District of New York. (Par. 57 above.) After disposing of the contentions of plaintiff in error on the issue of the constitutionality of the 1916 Estate Tax law, and indicating that the Supreme Court had disposed of the points raised on this issue in the case of *Knowlton vs. Moore*, 178 U. S. 41, the court concluded that "the argument against its constitutionality is based upon a premise that is unfavorable to the contention of the plaintiffs in error upon this point."

In passing upon the issue of the deductibility from gross estate of the New York State Inheritance Tax the court said: "Charges against the estate, as pointed out by the court below, are only charges that affect the estate as a whole, and therefore do not include taxes on the right of individual beneficiaries. This reasoning excludes not only the New York succession tax but those paid to other States which can stand no better than that paid in New York."

It should be noted that neither this decision nor those referred to in par. 57 above, all of which relate to the Estate Tax in the Revenue Act of 1916, have any bearing on the Federal Estate Tax provisions on the same matter

in the present Revenue Act. Sec. 403 of the present act expressly states that State inheritance taxes are not included in the deductions allowed for the purpose of determining the taxable net estate. (Par. 46 above.)

[¶ 58] Art. 47. **Unpaid mortgages.**—The full amount of unpaid mortgages on property included in the gross estate should be deducted under this heading, including interest which had accrued at the time of death, whether payable at that time or not. Interest should be computed upon the basis of 365 days to the year. The full value of the real estate, without any deduction for mortgages, must be returned as part of the gross estate. As real property situated outside of the United States is not part of the gross estate, the amount of mortgages upon such property should be deducted only where the decedent was personally liable for mortgage debt.

[¶ 59] Art. 48. **Losses from casualty or theft.**—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated by insurance or otherwise. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. Losses sustained by reason of depreciation in the value of the assets of the estate subsequent to the decedent's death are not deductible. The term "casualty" includes only losses of a fortuitous and unusual character, such as result from violence, or from a disaster which could not be foreseen or prevented by the exercise of reasonable care. Losses due to the death of animals from disease are deductible. In order to be deductible a loss must occur during the settlement of the estate. Where property has been delivered to the beneficiary, settlement has been effected, and no deduction may be had for loss of the property.

[¶ 60] Art. 49. **Support of dependents.**—The support during the settlement of the estate of dependents of the decedent should be deducted, but pursuant to the following rules:

- (1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered and not in excess of what is reasonably required.
- (2) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.
- (3) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

PROPERTY PREVIOUSLY TAXED.

[¶ 61] (Sec. 403. That for the purpose of the tax the value of the net estate shall be determined—

- (a) In the case of a resident, by deducting from the value of the gross estate—)
- (2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received

by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in the decedent's gross estate;

[¶ 62] Art. 50. **Property taxed within five years.**—There may be deducted from the gross estate under this heading an amount equal to the value at the time of the decedent's death of any property which can be identified as having been received by him as a share in the estate of any person who died within five years prior to the decedent's death, if an estate tax under the Revenue Act of 1917 or the Revenue Act of 1918 was collected from such estate. There may also be deducted an amount equal to the value of property which can be identified as having been acquired by the decedent in exchange for property received as a share in the estate of such a prior decedent. In order to establish the right to this deduction it must be shown—

(1) That the two deaths occurred within five years of each other;

(2) That the first decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and that the second decedent died after February 24, 1919, the date of the passage of the Revenue Act of 1918;

(3) That an estate tax has actually been collected from the estate of the prior decedent (the mere filing of a return for such an estate not being sufficient); and

(4) That the property received from the prior estate was returned as part of the gross estate of the prior decedent, and the property the value of which is sought to be deducted, or property taken in exchange therefor, has been included in the gross estate of the second decedent.

The statute limits the deduction to the value of property which can be identified by the executor as having been received or acquired in the manner described. The burden rests upon the executor of proving that the estate is entitled to this deduction.

[¶ 63] Art. 51. **Property originally received.**—If the property originally received from the prior estate is included in the decedent's gross estate, the executor must describe it fully, and prove its identity with the property received from the prior estate. The value to be deducted is the value at the time of the second decedent's death.

[¶ 64] Art. 52. **Property acquired in exchange.**—The deduction for substituted property is limited to property acquired in exchange for the identical property received from the estate of the prior decedent. Where there is a subsequent exchange, the right to deduction is lost. Where, however, property is sold, and the proceeds immediately invested in other property, the property purchased is deemed to be taken in exchange, and its value is deductible.

In the case of an exchange the executor must describe and identify fully both the property originally received from the prior estate and the property acquired in exchange therefor. He must also state the date and nature of the transaction by which the exchange was effected, the name and address of the transferee, and the consideration, if any, given or received by the decedent in addition to the property received from the prior estate. If the exchange was made by written instrument of public record, a precise reference must be made to the record containing the instrument, and if by instrument not of record a copy of the instrument must be supplied. If there was no written instrument, an affidavit as to the facts of the exchange by one or more persons having personal knowledge of the matter must be furnished.

If at the time of exchange the decedent gave a consideration in addition to the property received from the prior estate, and acquired property of greater value than the property so received, there may be deducted the pro-

portion of the value of the property received in exchange which the value of the original property bears thereto.

CHARITABLE AND SIMILAR BEQUESTS.

[¶ 65] (Sec. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—)

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

[¶ 66] Art. 53. **Public, charitable, and similar bequests.**—Bequests to religious, charitable, scientific, literary, or educational corporations are deductible only if the corporation is organized or operated exclusively for one of the purposes specified (see Art. 54). Similarly, in the case of a trust, the trust must be exclusively for such purposes. It does not prevent deduction, however, that the property placed in trust is also subject to another trust for a private purpose. Thus, where money or property is placed in trust to pay the income to an individual during life, and then to pay or deliver the same to a charitable corporation, or apply the principal to a charitable purpose, the charitable bequest or devise forms the basis for a deduction. The amount of the deduction, in such case, is the value, at the date of the decedent's death, of the remainder interest in the money or property which is devised or bequeathed to charity. For the manner of determining the value of such remainder interest, see Article 20. Gifts made in the decedent's lifetime are deductible only if made in contemplation of death, or intended to take effect at or after death, and the property is consequently included in the gross estate. Gifts made in satisfaction of a legacy are also deductible. The deduction is not limited in the case of the estates of residents to bequests to domestic corporations or to trustees for use within the United States.

[¶ 67] Art. 54. **Religious, charitable, scientific, and educational corporations.**—In order to be exempt the corporation or association must meet three tests: (1) it must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated exclusively for such purposes; and (3) no part of its income must inure to the benefit of private stockholders or individuals.

(1) Charitable corporations include an association for the relief of the families of clergymen, even though the latter make a contribution to the fund established for this purpose; or for furnishing the services of trained nurses to persons unable to pay for them; or for aiding the general body of litigants by improving the efficient administration of justice. Educational corporations include an association whose sole purpose is the instruction of the public, even if it merely disseminates propaganda on a single question. Thus an association inculcating prohibition or protectionist principles is exempt. The same is true of an association to promote acquaintance with the Spanish language and literature, although it has incidental amusement features; of an association to increase knowledge of the civilization of another country; and of a Chautauqua association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, and whose amusement features are incidental to this purpose. Societies designed to encourage the performance of first-class orchestral music are not exempt, the purpose being merely to

provide a high grade of entertainment. Scientific corporations include an association for the scientific study of law, to the end of improvement in its administration.

(2) Where a religious corporation owns a large quantity of farm land and works it, and also manufactures and sells clothing and other articles for profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society.

(3) It does not prevent exemption that private individuals, for whose benefit a charity is organized, receive the income of the corporation or association. The statute refers to individuals having a personal and private interest in the activities of the corporation, such as stockholders. If, however, a corporation issues "voting shares," which entitle the holders upon the dissolution of the corporation to receive the proceeds of its property, including accumulated income, the right to exemption does not exist, even though the by-laws provide that the shareholders shall not receive any dividend or other return upon their shares.

[¶ 68] Art. 55. Proof of exemption.—In order to prove his right to this deduction the executor must submit:

(1) Certified copy of the will of the decedent, or the instrument of gift in the case of a transfer of property in contemplation of death.

(2) A receipt, statement, or other documentary evidence to show the beneficiary's receipt of, or intention to accept, the legacy, devise, or gift.

(3) Affidavit of the executor stating whether any action has been instituted to contest the will, or whether, according to his information and belief, any such action is contemplated.

(4) Such other document or evidence as may be specified by the Bureau.

[¶ 69] Art. 56. Conditional bequests.—Where the bequest, legacy, devise, or gift is dependent upon the performance of some act, or the happening of some event, in order to become effective it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed. Where, by the terms of the bequest, devise or gift, it is subject to be defeated by a subsequent act or event, no deduction will be allowed.

[¶ 70] Art. 57. Effective date.—The deduction may be claimed by the estates of all decedents dying after December 31, 1917. Where the tax has been paid without taking the deduction a claim for refund may be made, as provided by Article 110.

SPECIFIC EXEMPTIONS.

[¶ 71] (Sec. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—)

(4) An exemption of \$50,000;

[¶ 72] Art. 58. Specific exemption.—There may be deducted from the gross estate of all resident decedents a specific exemption of \$50,000. No part of this exemption is allowed in the case of nonresident decedents. (See Art. 59.) If more than one return is made for purposes of the tax, the exemption may be taken only once.

DEDUCTIONS IN THE CASE OF NONRESIDENT ESTATES.

[¶ 73] (Sec. 403. That for the purpose of the tax the value of the net estate shall be determined— * * *)

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision

(a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States; * * *

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent, and the amount receivable as insurance upon the life of a nonresident decedent where the insurer is a domestic corporation, shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

[¶ 74] Art. 59. **Manner of making deduction.**—The gross estate of a resident and of a nonresident are made up in the same way. In ascertaining the net estate, however, which is subject to tax, there is a radical difference between the two cases. Whereas the net estate in the case of a resident is determined by making the specified deductions from the entire gross estate, the net estate in the case of a nonresident is determined by making the deductions from the value of so much of the gross estate as is situated in the United States. Thus, in substance, the statute attempts to tax only the transfer of so much of the estate of a nonresident as is situated in the United States. On the other hand, nonresident estates are not entitled to the specific exemption of \$50,000.

[¶ 75] Art. 60. **Situs of property.**—The situs of property, both real and personal, for the purpose of the tax is its actual situs. Stock in a domestic corporation, and insurance payable by a domestic insurance company, constitute property situated in the United States, although owned by, or payable to, a nonresident. A domestic corporation or insurance company is one created or organized in the United States. Bonds actually situated in the United States, moneys on deposit with domestic banks and moneys due on open accounts by domestic debtors constitute property subject to tax.

Where insurance is payable to the estate, all insurance in domestic companies should be included in the gross estate. Where insurance is payable to individuals other than the executor, there should be included in the gross estate only the excess of domestic insurance over the sum of \$40,000. Foreign insurance is not considered.

Example: The testator leaves \$30,000 of insurance in domestic companies and \$30,000 of insurance in foreign companies, payable in each case to individual beneficiaries. As the domestic insurance does not exceed \$40,000, there is nothing to be included in the gross estate.

Example: The testator leaves \$50,000 of insurance in domestic companies and \$50,000 of insurance in foreign companies, payable in each case to individual beneficiaries. There should be included in the gross estate \$10,000 being the excess of the domestic insurance over \$40,000.

Any property of which the decedent has made a transfer, or with respect to which he has created a trust, in contemplation of, or to take effect at or after, death, is deemed to be situated in the United States if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

[¶ 76] NOTE: Bonds, notes and certificates of indebtedness of the United States and of War Finance Corporation owned by a nonresident decedent at time of death are not exempt from Federal Estate Tax if situated in the United States at the time. So held in letter of Commissioner to inquiring taxpayer, dated May 14, 1919.

In a subsequent letter to another inquirer, Deputy Commissioner Hagerman, Jr., advised on August 21, 1920, that bonds of the United States beneficially owned by a nonresident alien should not be included as a part of the

gross estate in the United States for the purposes of the estate tax. It was stated in this letter that the ruling therein made was not contrary to T. D. 2530 and applied only to Acts referred to in the letter. (Revenue Act 1916, Sec. 202 (a); Act 1918, Sec. 402 (a); Victory Loan Act March 3, 1919, Sec. 4, amending Fourth Loan Act of July 9, 1918, Sec. 3.)

[¶ 77] T. D. 2449. The value of United States Bonds can not be excluded from the gross or net estate in determining estate tax due. The following opinion of the Solicitor of Internal Revenue, rendered February 13, 1917, is published for the information of all concerned:

Sir: Answering the question presented by.....under date of the 10th instant, relative to the liability of estates to taxation under the recent Federal Estate Tax Act, it is manifest from the following decisions of the U. S. Supreme Court that U. S. Government bonds must be added to the value of estates for the purpose of taxation under said Act.

The U. S. Supreme Court in *Plummer vs. Coler* (178 U. S. 134), considering the question whether, under the inheritance tax laws of a state, a tax might be validly imposed upon a legacy consisting of United States bonds issued under a statute declaring them exempt from state taxation in any form, said:

"We think the conclusion, fairly to be drawn from the state and Federal cases, is, that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the State may lawfully measure or fix the amount of the tax by referring to the value of the property passing; and that the incidental fact that such property is composed wholly or in part of Federal securities, does not invalidate the tax or the law under which it is imposed."

And dealing directly with the power of the Federal Government under the Inheritance Tax Act of 1898, to impose legacy taxes upon the transmission of an estate consisting of "free-tax" Government bonds, the court in *Murdock vs. Ward* (178 U. S. 147), referring to the discussion and decision in the *Plummer* case, said:

"If a state inheritance law can validly impose a tax measured by the amount or value of the legacy, even if that amount includes United States bonds, the reasoning that justifies such a conclusion must, when applied to the case of a Federal inheritance law taxing the very same legacy, bring us to the same conclusion. We must, therefore, hold that if, as held in *Knowlton vs. Moore*, the tax imposed under the Act of June 13, 1898, is not invalid as a direct unapportioned tax, nor for want of uniformity, nor as an infringement upon the laws of the states regulating wills and descents, then the tax upon legacies or bequests, descendible under and regulated by state laws, is valid even if such legacies incidentally are composed of Federal bonds."

And further, in *Sherman vs. United States* (178 U. S. 151), the court said:

"The proposition that bonds of the United States and the income therefrom are not lawfully taxable under an inheritance tax law of the United States, because exempted by contract from such tax has just been decided not to be well founded."

This is clearly conclusive of the whole question. (T. D. 2449, February 13, 1917.)

[¶ 78] T. D. 2530. Bonds of domestic corporations, owned by nonresident decedents and being physically situated outside of the United States, are not part of gross estate.—Section 202 of the Revenue Act of September 8, 1916, in defining the gross estate, provides that stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States. The holding of this office has been that bonds of a domestic corporation owned and held by a nonresident decedent were likewise deemed

property within the United States and taxable as a portion of the gross estate of the decedent.

This question has had careful reconsideration, and it is the opinion of this office that the language of the section of the act above referred to does not evidence the intention of Congress to impose a tax upon bonds of a domestic corporation owned and held by a nonresident decedent, when such bonds are physically situate outside of the United States, Hawaii or Alaska at the time of the death of the nonresident owner.

It is clear, however, that Congress has the power and evidenced an intention in the act above referred to to impose a tax upon bonds both foreign and domestic, owned by a nonresident decedent, which bonds are physically situate in the United States, Hawaii or Alaska at the time of the owner's death and such bonds must be returned as a portion of his gross estate.

It is of course clear that bonds, both foreign and domestic, owned by resident are taxable, regardless of where such bonds are situated at the time of the owner's death.

Rulings of this office announced in Regulations and Treasury Decisions, inconsistent with and contrary to the above, are hereby revoked. (T. D. 2530, October 8, 1917.)

[¶ 79] Art. 61. Deduction for claims and expenses.—The character of the deduction is the same as in the case of resident estates (see Arts 37 to 49). It is immaterial whether the expenditures are incurred or paid in this country or elsewhere. The deduction, however, is subject to limitations which do not apply in the case of a resident estate. Only that proportion of the claims and expenses is deductible which the value of the property situated in the United States bears to the value of the entire gross estate, wherever situated; and in no event may a sum be deducted in excess of 10 per cent of the value of the property situated in the United States. This 10 per cent limitation does not apply to the deductions subsequently considered. (See Arts. 62, 63.)

[¶ 80] (Sec. 403. That for the purpose of the tax the value of the net estate shall be determined— * * *

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States; and

[¶ 81] Art. 62. Property previously taxed.—The value of property owned by a nonresident person dying after October 3, 1917, or forming part of the gross estate of the decedent, may be deducted within the limitations prescribed with reference to resident estates (see Art. 50), and subject to the further condition that the property shall have been situated in the United States at the time of the death of the second decedent. The detailed rules for deductions in the case of nonresident estates are consequently as follows:

(1) That the two deaths occurred within five years of each other.

(2) That the first decedent died after October 3, 1917, and that the second decedent died after February 24, 1919.

(3) That an estate tax has actually been collected from the estate of the first decedent (the mere filing of a return not being sufficient).

(4) That the property originally received from the prior estate has been returned as part of the gross estate of the prior decedent, and that the prop-

erty sought to be deducted is either the identical property so returned or was taken in exchange for such property; and

(5) That the property sought to be deducted shall have been situated in the United States at the time of the death of the present decedent.

For the rules for determining when property is acquired in exchange, within the meaning of the statute, see Article 52.

[¶ 82] (Sec. 403. That for the purpose of the tax the value of the net estate shall be determined— * * *

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

* * * No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. * * *

In the case of any estate in respect to which the tax under existing law has been paid, if necessary to allow the benefit of the deduction under paragraph (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

[¶ 83] Art. 63. **Public, charitable, or similar gifts.**—Where the bequest is to a corporation, it is limited to a domestic corporation; that is, one created or organized in the United States. Where the bequest is to a trustee, it must be for use exclusively within the United States. The requirements are different and should not be confused. The first relates to the character of the donee; the second to the character of the use of the gift. With these exceptions the rules for deduction are the same as in the case of resident estates (see Arts. 53, 54).

This deduction applies to the estates of all decedents dying after December 31, 1917. In the case of any estate entitled to the deduction which paid the tax without receiving the benefit of the right, the excess tax will be refunded upon filing of claim for refund.

[¶ 84] Art. 64. **Determination of net estate.**—The following example will show the manner of determining the net estate, subject to tax, of a nonresident decedent. The gross estate of the decedent, wherever situated, amounts to \$1,000,000, of which the property in the United States, Hawaii, and Alaska amounts to \$200,000. The total legal deduction for claims and expenses (see Art. 61) amounts to \$75,000; and there are charitable bequests, for use within the United States, amounting to \$25,000. Inasmuch as the property in the United States, Hawaii, and Alaska constitutes 20 per cent of the entire gross estate, one-fifth of the total deductions for claims and expenses is the proportionate share corresponding to this property. This proportion amounts to \$15,000; and as this amount does not exceed ten per cent of the property situated in the United States, Hawaii, and Alaska, the entire amount is deductible. The following result is accordingly obtained:

Gross estate within the United States.....	\$200,000
Proportion of deductions for claims and expenses under subdivision 1.....	\$15,000
Charitable bequests in United States.....	25,000
	<hr/> 40,000
Net estate subject to tax.....	\$160,000

The tax on this amount should be computed in the manner previously provided for residents' estates. (See Art. 8.)

In the example given, if the total legal deductions for claims and expenses had amounted to \$150,000, the proportionate amount of deductions, \$30,000, would not have been deductible, inasmuch as this would have exceeded ten per cent of the property in the United States, Hawaii, and Alaska. In such case the total amount of the deductions allowable for claims and expenses would have been ten per cent of the gross estate within the United States, or \$20,000, making, with the charitable bequests of \$25,000, a total deduction of \$45,000. The net estate subject to tax would accordingly have been \$155,000, instead of the amount given in the example.

[¶ 85] Art. 65. **Payment of tax.**—The regulations with reference to rates of tax and payment are the same in the case of estates of nonresidents as of residents. The statute provides that the executor shall pay the tax. If no executor or administrator has been appointed in the United States, every person in the United States in possession of any part of the decedent's gross estate is liable for the tax upon the transfer of the portion of the gross estate in his possession. All checks, drafts or money orders should be made payable to the order of Collector of Internal Revenue. Payment so made of an amount indicated to be due on the return discharges the tax only in case subsequent investigation and audit disclose that the correct amount has been paid. (See Art. 90.)

SIXTY-DAY NOTICE—RESIDENT ESTATES.

[¶ 86] Sec. 404. That the executor, within sixty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector.

[¶ 87] Art. 66. **When notice required.**—A preliminary notice, called the 60-day notice, is required to be filed in the case of every resident decedent who died on or after February 25, 1919, the gross amount of whose estate exceeds \$50,000. This notice must be filed in duplicate with the collector in whose district the decedent had his domicile at the time of death. Where there is doubt as to whether the gross estate exceeds \$50,000, the notice should be filed, as matter of precaution, in order to avoid penalties.

Prior to February 25, 1919, the notice was required if the gross estate exceeded \$60,000, or if there was any net estate after the deductions allowed by law, including the \$50,000 exemption, had been taken. These provisions are not now in effect except to determine delinquency under previous acts.

In the case of the estates of nonresident decedents, notice is required if there is any property situated in the United States, without reference to its value.

[¶ 88] Art. 67. **Notice by executor or administrator.**—The executor or administrator of an estate is required to file notice on Form 704 within 60 days of his appointment by the court, or of coming into possession of any property of the estate, whichever event occurs first. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the 60-day period because of uncertainty as to the exact value of the assets. Since the filing of the notice within the prescribed period is mandatory, the estimate of the gross estate called for by the notice is merely the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or filing of false or fraudulent notice, see Articles 103 and 104.

[¶ 89] Art. 68. Notice by others than the executor or administrator.—The notice upon Form 704 must be filed by others than the executor or administrator if either of the following situations exists:

- (1) No executor or administrator has been appointed.
- (2) There is property included in the gross estate, as defined by statute, which has not, and will not, come into the custody and control of the executor.

In these cases, the persons in possession of the property included in the gross estate are executors, within the meaning of the statute, for the purpose of filing the notice.

[¶ 90] Art. 69. Notice when no executor appointed.—Where no executor or administrator has been appointed, the person taking possession of property at the time of death is required to file notice within 60 days of the date of death. The notice must be filed whether possession of the property was held at the date of death, or was acquired thereafter. The notice on Form 704 must be filed by such persons in any case where an executor or administrator has not been appointed within 60 days of the decedent's death, although one is appointed subsequently. Where an executor or administrator is appointed within the 60-day period, the duty of filing the notice devolves upon him; and all other persons are relieved from liability to file with respect to property coming into the custody and control of the executor or administrator.

[¶ 91] Art. 70. Notice where property not within executor's control.—Where there is property that will not come into the custody and control of the executor, but which is included in the gross estate as defined by the statute, the notice on Form 704 must be filed within 60 days of the date of death by the person in possession or control of the property at the time of death.

The persons required to file Form 704, in compliance with this requirement, include the following:

- (1) The surviving husband or wife in the case of property owned as tenants in the entirety.

- (2) Donees who have received within two years prior to the decedent's death any gift of material value from the decedent, or who have received at any time whatever gifts made by the decedent in contemplation of death or intended to take effect at or after death.

- (3) Trustees holding property conveyed during lifetime by decedent in contemplation of death, or with intent to provide for others at or after the decedent's death, regardless of the date of execution of the instrument making the conveyance.

- (4) Fiduciaries holding property of any kind jointly for the decedent and another or others. Example: A savings bank holding a joint account in the name of the decedent and another, payable to either or to the survivor, must file Form 704 for the full amount of the account.

- (5) Trustees having in charge property over which the decedent exercised a general power of appointment, and which will not come into the possession and control of the executor or administrator.

- (6) Beneficiaries other than the executor who receive insurance upon the decedent's life, provided the total amount of the insurance receivable by all such beneficiaries exceeds \$40,000.

The primary duty of filing notice with respect to property which will not come into the executor's control rests upon the person actually in possession at the time of death. It is the duty of the succeeding owner, however, where property of this character is held at the time of death by an agent or fiduciary, to give notice within 60 days of the date of taking possession, unless he finds that notice has already been filed. For example, the appointee of property, under a general power of appointment exercised by the decedent, should file

notice within 60 days of receiving possession, unless the notice has already been filed.

[¶ 92] Art. 71. **Insurance companies' 60-day notice.**—Sixty-day notice upon Form 787 must be filed by every insurance company which pays insurance upon the life of a resident decedent to beneficiaries other than the executor or administrator in amounts aggregating more than \$40,000, or which has knowledge of insurance payable to such beneficiaries by other insurance companies, aggregating, with amounts payable by the company itself, more than \$40,000. If the proceeds of any policy are payable in the form of an annuity, the present worth of such annuity, for the purpose of deducting the \$40,000 exemption, should be computed in accordance with the provision of Article 20. Notice should be filed with the collector of the district in which the decedent had his domicile within 60 days of receipt by the company of notification of death. If the insurance company is in doubt as to its liability to give notice, the notice should be filed.

Where insurance is taken out with a foreign branch of a domestic insurance company, the notice should be given by the home office of the company within 60 days of the receipt by the foreign branch of information of the decedent's death.

[¶ 93] Art. 72. **Where military exemption claimed 60-day notice required.**—The executors of estates exempted from the tax (see Art. 9) are required to file the 60-day notice with the proper collector in the same manner as the executors of taxable estates. The executor should, in addition, write across the face of the form the words "Military exemption claimed."

SIXTY-DAY NOTICE—NONRESIDENT ESTATES.

[¶ 94] Art. 73. **Nonresident 60-day notice.**—A 60-day notice on Form 705 should be filed with the Commissioner of Internal Revenue, Washington, D. C., by every executor or administrator appointed in the United States. The notice is necessary if any part of the decedent's gross estate was situated in the United States at the time of death, regardless of the value of that part or of the entire gross estate. If no executor or administrator has been appointed in this country, notice must be filed within 60 days of the date of death by every person in possession of any part of the gross estate in the United States. If such person has no knowledge of the decedent's death within 60 days of its occurrence, he should file this notice immediately upon obtaining such knowledge. The filing of notice by a foreign executor or administrator does not relieve persons in possession from the duty of filing notice. If there is a delay in the appointment of a local executor or administrator of more than 60 days after the death, persons in possession should file notice. The term "person in possession of property of the decedent" includes the decedent's agents or representatives; donees and transferees or trustees of property transferred in contemplation of death; the surviving owner of property held jointly; safe-deposit companies, warehouse companies, and similar custodians of property in this country of a nonresident decedent; brokers holding as collateral securities belonging to the decedent or investment funds owned by the decedent; banking institutions holding money on deposit or for any specific purpose, such as purchase of goods, if the title rests in the decedent; and debtors of the decedent in this country.

[¶ 95] Art. 74. **Transfer agents' 60-day notice.**—A 60-day notice upon Form 714 is required to be filed whenever a corporation, its transfer agent, register, or paying agent, is called upon to make a transfer of stocks or bonds, or to pay interest or dividends, to any successor in interest of any nonresident stockholder or bondholder who died after September 8, 1916, unless the trans-

fer is made upon the order of an executor or administrator appointed in the United States. The notice is required for dividends declared prior to the day of death, and for interest which had accrued on bonds prior to the death of the decedent although payable thereafter. Notice should be filed with the Commissioner of Internal Revenue at Washington, D. C., within 60 days of the date of death, or immediately upon receipt of the order of transfer or payment. A transfer agent should be vigilant to report all cases in which the fact of the death of a nonresident appears. Where the securities are received without the personal assignment of the decedent, but with the transfer order of the foreign executor, it is clear that the case should be reported. Where the securities bear the personal assignment of the decedent, the transfer should be reported if made upon the order of a foreign executor, or if information is received in any other manner that the record owner has died a nonresident of the United States.

[¶ 96] Art. 75. Importance of requirement.—In order to prevent loss of the tax upon nonresident estates, it is essential that transfer agents should exercise great care in reporting all transfers of the kind described. Their records will be examined from time to time by internal-revenue officers to determine whether this regulation is being strictly complied with. Failure to file notice in the manner prescribed will render the transfer agent liable to a fine.

[¶ 96a] Art. 75-A. Transfer of stock of nonresident decedent, how made.—Wherever a transfer agent is required to file 60-day notice as provided in Article 74, he shall not make transfer of the stock standing in the name of the decedent until there has been delivered to such collector of internal revenue as may be designated by the Commissioner the bond of the party to whom the stock is to be transferred with corporate surety in an amount to be fixed by the Commissioner, conditioned for the payment of the tax upon the transfer of the decedent's estate, not exceeding in amount the value of the stock to be transferred. Upon receipt of the 60-day notice the Commissioner will at once, upon request, fix the amount for which the bond is to be given. In lieu of the bond a deposit of the amount so fixed may be made with such collector of internal revenue as the Commissioner may designate. Where a sum of money is deposited in lieu of the bond, and it exceeds the amount of the tax as finally determined, the excess will be refunded to the person making deposit. In lieu of the provisions and restrictions hereinbefore set forth, transfer agents are authorized to make a transfer of stock standing in the name of a nonresident decedent to the duly qualified ancillary executor or administrator within the United States, who shall make a return on Form 706, as any other executor is required by law to do, provided that such transfer agent at the time of making such transfer gives notice thereof in writing to the Commissioner of Internal Revenue.

[¶ 97] Art. 76. Insurance companies' 60-day notice.—The 60-day notice upon Form 788 must be filed by every domestic insurance company which pays insurance upon the life of the nonresident decedent in any amount either to a foreign executor or administrator, or to individual beneficiaries. The notice should be filed with the Commissioner of Internal Revenue, Washington, D. C., within 60 days of receipt of proof of claim. No notice is required to be filed, if the only insurance paid is receivable by an executor appointed in the United States. If, however, the company is liable to give notice, it is required to report insurance of all classes in order that its statement may be complete.

[¶ 97a] Art. 76-A. Payment of policy of life insurance taken out by resident and nonresident decedents, how made.—Wherever an insurance company is required to file a 60-day notice, as provided in Article 76, where the insured was a nonresident it shall not make payment of any policy or policies to a foreign

executor or administrator, or to an individual beneficiary, until there has been delivered to such collector of internal revenue as may be designated by the Commissioner the bond of the party to whom the insurance is to be paid, with corporate surety in an amount to be fixed by the Commissioner, conditioned for the payment of the tax upon the transfer of the decedent's estate, not exceeding the amount of insurance payable under such policy to the executor, and the excess over \$40,000 of the aggregate insurance payable to specific beneficiaries other than the executor or the estate of the decedent. Upon receipt of the 60-day notice the Commissioner will at once, upon request, fix the amount of the bond to be given. In lieu of such bond a deposit of the amount fixed may be made with such collector of internal revenue as the Commissioner may designate. If in lieu of the bond a sum of money is deposited, and such sum exceeds the amount of tax as finally determined, the excess will be refunded to the person making the deposit. In lieu of the bond or a deposit of money, where insurance is payable to a foreign executor or administrator, the insurance may be paid to ancillary executor or administrator appointed within the United States, provided that such ancillary executor or administrator shall have given bond with corporate surety in an amount sufficient, in the opinion of the Commissioner, to discharge the tax liability of the estate, not exceeding the amount of insurance subject to be included within the gross estate of the decedent.

Wherever insurance companies are required to file a 60-day notice, as provided in Article 71, where the decedent is a resident and there is subject to be included within the decedent's gross estate any excess over \$40,000 in the aggregate of insurance payable to specific beneficiaries other than the executor or the estate of the decedent, the same provisions and restrictions in regard to payment of insurance shall apply and govern insurance companies as are set forth in this article in the case of nonresidents.

Where insurance companies are required to file a 60-day notice, as provided in Article 71 or in Article 76, if the decedent is a resident or nonresident, and there is an excess over \$40,000 in the aggregate of all insurance payable to specific beneficiaries other than the executor or the estate of the decedent, insurance companies are authorized, in lieu of the provisions and restrictions hereinbefore set forth, upon consent of the beneficiaries to make payment of such insurance to such beneficiaries through the duly qualified executor or administrator within the United States or through the duly qualified ancillary executor or administrator in the United States, who shall make return on Form 706 of the excess over \$40,000 of such insurance, if the estate be that of a nonresident, or that of a resident if there be a net estate subject to tax.

THE RETURN—RESIDENT ESTATES.

[§ 98] Sec. 404. * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deduction allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

[¶ 99] Art. 77. **When return required—Date of filing.**—A return on Form 706 is required in the case of every resident decedent who died on or after February 25, 1919, leaving a gross estate exceeding \$50,000 in value. This return must be filed with the collector in whose district the decedent resided. It must be filed within one year after the date of death, unless an extension is granted, and must be in duplicate. In the case of decedents who died before February 25, 1919, the effective date of the Revenue Act of 1918, the return is required if the gross estate exceeds \$60,000, or if there is any net estate after the legal deductions, including the \$50,000 exemption, have been taken. In the case of estates of nonresidents return is required if the decedent owned any property in the United States, regardless of value. (See Art. 88.)

[¶ 100] Art. 78. **Procedure where no return has been made.**—The statute provides that if no return is filed for the estate of a decedent, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return. The Commissioner may amend this return from such knowledge or information as he can obtain, through testimony or otherwise. A return so made by the Commissioner, or made by the collector and approved by the Commissioner, is a sufficient basis for assessing the tax. Where a tax is found to be due upon such a return, the estate will be liable for penalties as well as for the tax.

[¶ 101] Art. 79. **Investigation where return has been filed.**—An investigation of every return for estate tax will be conducted to verify the accuracy of the return. The investigation will be made by special officers of the Bureau. The fact that an investigation is made does not reflect upon the competence or good faith of the executor, since investigations are required in all cases as a matter of administrative procedure. The executor should co-operate with the examining officer in order that the full tax liability may be definitely determined and the case closed. During the course of the investigation the examining officer will inspect the books and records of the estate, interview the executor and other persons having knowledge of the decedent's affairs, verify the value of the assets and the amounts of debts and administration expenses, and take such other steps as may be necessary to determine the correct tax.

It is the purpose of the Bureau to make these investigations as soon as practicable after the filing of the return. Whenever there are special and urgent reasons for any early investigation, the collector should be notified in order that the case may be given special attention. Upon completion of the investigation the executor will be apprised by the examining officer of his findings, and will be given an opportunity to discuss the case and present such data as he may desire, to be considered by the Bureau in connection with the examining officer's report. Upon the completion of the review and audit by the Bureau of the return and the examining officer's report, the executor will be informed by letter from the Commissioner of the result of the audit. If the letter contains notification of an unpaid balance of tax, the executor should make payment to the collector. After the expiration of 30 days from receipt of the notification interest will accrue upon the excess tax at the rate of ten per centum per annum. If the executor wishes to file claim for abatement of any part of the excess tax, such claim must be filed within 30 days of receipt of notification, or he may pay the tax in order to prevent the running of interest, and submit claim for refund.

[¶ 102] Art. 80. **Persons liable for return.**—The statute provides that the executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. Where no executor or administrator has been appointed, every person in possession of any part of the gross estate is considered to be an executor for the purposes

of the tax, and is liable for a return as to the property in his possession. The executor or administrator is required to make a return of the entire gross estate of the decedent, including property which will not come into his possession, such as property transferred by the decedent before death, and property owned by tenants in the entirety. If the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. Where the executor is unable to make a return as to any property, the statute requires every person holding a legal or beneficial interest therein, upon notice from the collector, to make return as to such part of the gross estate. For penalties for delinquency in filing return, or filing of false or fraudulent return, see Articles 103 and 104.

[¶ 103] Art. 81. Extension of time for filing return.—If it is impossible for the executor to file a complete return within a year from the date of death, he may make application to the collector for an extension of time for filing the return, stating in detail in his application the circumstances which prevent the filing of the return by the due date and setting forth briefly but fully a statement of what the gross estate consists, together with a statement of the amount of deductions claimed, provided that in the first instance the application be made at least 30 days prior to the due date of the return. If the collector is satisfied that a complete return can not be made he may grant extensions of time not to exceed 180 days from the due date, no single extension exceeding 60 days. At the expiration of the last extension period granted a return must be filed. If at that time it is still impossible to file a complete and accurate return, on account of the unsettled condition of the affairs of the estate, the return filed by the executor must be as complete as possible, and must set forth all the facts in his possession as to the gross and net estate. Such a return will be accepted by the collector; but the executor must file an amended return as soon as the condition of the estate permits. The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax, which is due one year after decedent's death unless the time for payment thereof be extended by the Commissioner, as provided in Article 93. Where application has been made for an extension of time to file a return, but no extension of time for the payment of the tax has been granted, the executor will be required to pay on the due date a sum of money sufficient, in the opinion of the collector, to discharge the tax, even though an extension of time to file the return has been or may be granted. The statements accompanying the application will be subject to investigation and verification in acting upon the application for extension and in fixing the amount which the executor will be required to pay on the due date of the tax as sufficient in the opinion of the collector to discharge the tax.

[¶ 104] Art. 82. Execution of return.—The return must be made on Form 706, copies of which will be supplied by the collector. It must contain an itemized inventory, by schedule, of the property constituting the gross estate, together with a full statement of deductions claimed, as therein provided. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor, so as to be available for inspection whenever required. Certified copies of the will, if any, must be submitted with the return, together with duplicate copies of the other documents required by the instructions printed on the form, or any documents which the executor may desire to submit with the return in explanation thereof.

[¶ 105] Art. 83. **Supplemental data.**—The statute provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax. It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to a fine not to exceed \$500, and proceedings may be instituted in the proper United States court to secure compliance with the requirement.

[¶ 106] Art. 84. **Same—Nonresident estates.**—Pursuant to this provision the executor of a nonresident decedent is required to file with the return:

(1) Certified copy of will, or, if the decedent left several wills, to govern in different jurisdictions, certified copy each will.

(2) Certified copy of inventory of foreign property filed under a foreign estate, succession or death-duty act; or, if no such inventory was filed, copy of inventory filed with the foreign court of probate jurisdiction.

(3) Certified copy of schedule of claims filed under a foreign taxing act in cases where such claims are presented for deduction. If any item of deduction is not included in the schedule, the affidavit of the foreign executor or administrator with reference thereto should be submitted.

The specified information is required whether or not the executor wishes to claim deduction, and is subject to the provision of the statute (see Sec. 403) requiring him to include in his return the value of the gross estate situated in the United States.

PRIVILEGED CHARACTER OF RETURNS.

[¶ 107] Art. 85. **Returns confidential.**—All estate tax returns and notices are treated as privileged communications and may not be exhibited to any person other than the executor or his duly authorized attorney, except as stated in Article 86. This requirement of secrecy will be rigidly enforced, and extends to information of a private nature submitted or obtained in connection with a return or notice. The requirement does not operate to prevent internal revenue officers from disclosing the returned value of any item or the amount of any specific deduction where such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the amount of the estate, the amount of tax, or other general data. Nor are the records in possession of the Bureau, whether on file with the Commissioner or the collector, open to inspection, except as provided herein.

[¶ 108] Art. 86. **Disclosure to persons having material personal interest.**—Where any person other than the executor has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The Commissioner will review the application, and, if it is approved, give written instruction to the collector to exhibit the return to the applicant, or give him such information as is specified. Under no circumstances shall the collector give information to persons other than the executor except upon the written order of the Commissioner, and to the extent authorized by such order.

[¶ 109] Art. 87. **Attorneys must have authorization.**—In all cases where information is sought regarding an estate, or an interview asked, by an attorney whose name does not appear on form of 706 as the attorney for the estate, the information or interview will be denied unless the attorney presents a signed statement from the executor, authorizing him to appear in his behalf. The limitation does not apply where an attorney asks a general ruling on a question relating to a specific estate, or where he asks information of the procedure to be followed in regard to filing notice or making payment. Where an attorney asks for information, or an interview, and his name appears on the return as attorney for the estate, the information or interview will be granted if his identity is established.

THE RETURN—NONRESIDENT ESTATES.

[¶ 110] Art. 88. **Return of nonresident estates.**—A return on Form 706 must be filed in duplicate with the Commissioner of Internal Revenue, Washington, D. C., within a year from the date of death if any part of the gross estate of the decedent was situated in the United States at the time of death. It is the duty of any executor or administrator appointed in the United States to file return for the whole of that part of the gross estate situated in the United States, whatever its value. If there is no such executor or administrator, every person in possession of any part of the gross estate in the United States may be required to file a return for such part. Notice will be given to such persons, however, where a return is required; and they are relieved of the duty of filing return by the appointment of an executor or administrator in the United States, not, however, by the appointment of a foreign executor or administrator. If, however, a complete return is actually filed by the foreign executor of property in the United States, the persons in possession need not file a return.

RETURN BY COLLECTOR.

[¶ 111] Sec. 405. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon.

Revised Statutes, Sec. 3176 (Comp. Sts., 1916, Sec. 5899).

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector, and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes.

[¶ 112] Art. 89. **Return by collector.**—Where the executor fails to file a return, or files an inaccurate one, the collector or deputy collector is required to make a return from such information as he possesses or is able to obtain. In such cases the Commissioner assesses the tax in the same manner as though the return had been filed by the estate.

PAYMENT OF TAX.

[¶ 113] Sec. 406. That the tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax.

[¶ 114] Art. 90. Payment.—The tax is due and payable one year from the date of death. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment, and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Payment will not be accepted before a return in proper form has been filed, except in cases where an extension of time to file a return has been granted, but no extension of time has been granted within which to pay the tax, and the executor desires to make payment under section 407 of the act of an amount sufficient in the opinion of the Collector to discharge the tax. Payment of the amount of tax shown to be due by a return accepted by the collector, executed in good faith and accurate so far as the knowledge of the executor extends, will be considered payment of the tax in full except as adjustment of the tax results from investigation, except as to any item which should have been but was not embodied in the return. If at the time payment is made the exact amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax will be considered payment in full except as the tax is adjusted after investigation. (See Arts. 78,95.) If the return filed contains a gross or fraudulent misstatement of fact, the payment of the amount of tax shown to be due thereby will not be deemed to be payment in full of the tax, since the collector's decision is based upon the assumption that the return is made in good faith.

[¶ 115] Art. 91. Payment by bonds or uncertified check.—Payment of the estate tax may be made by the delivery of Liberty Bonds or other bonds of the United States bearing interest at a higher rate than 4 per cent per annum, provided they were owned by the decedent for at last six months prior to the date of his death. Such bonds are received in payment to the amount of par and interest accrued at the time of the payment. (See T. D. 2802 and T. D. 2905.)

Collectors may accept uncertified checks in payment of the estate tax provided such checks are collectible at par—that is, for their full amount, without any deduction for exchange or other charges. If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank, and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. (See Revised Statutes, Sec. 3210.)

[¶ 116] T. D. 2705. U. S. Bonds bearing interest at a higher rate than four per cent to be accepted at par and accrued interest.—Section 14 (6) of the Act of April 4, 1918 (Public No. 120, 65th Congress), provided in part:

“That any bonds of the United States bearing interest at a higher rate than four per centum (whether issued under section one of this Act approved April twenty-fourth, nineteen hundred and seventeen), which have been owned by any person continuously for at least six months prior to the date of his death, and which upon such date constitute part of his estate, shall, under rules and regulations prescribed by the Secretary of the Treasury, be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States under or by virtue of any present or future law upon such estate or the inheritance thereof.”

Bonds of the United States falling within the classification specified will be accepted in payment of the estate tax at par and accrued interest. Bonds so receivable must (1) bear a higher rate of interest than four per centum per annum, and (2) have been owned by the decedent continuously for at least six

months prior to the date of his death, and upon such date constitute a part of the estate of the decedent. The reckoning of the required period of ownership may begin on the date when the decedent acquired bonds bearing interest at a higher rate than four per centum, by purchase, by conversion of other bonds, or otherwise.

The entire estate tax may be paid in bonds, or the tax may be paid partially in bonds and partially by cash or check. Collectors may not, however, accept bonds the par value and accrued interest on which aggregate a greater amount than the tax. (T. D. 2705, April 23, 1918.)

[¶ 117] T. D. 3144. **Department Circular No. 225.—Receipt of Liberty Bonds for estate taxes.**—The appended Department Circular No. 225, issued under date of January 31, 1921, with reference to the receipt of Liberty Bonds in payment of estate or inheritance taxes, is published for the information of internal-revenue officers and others concerned. (T. D. 3144, March 3, 1921.) This circular supersedes Department Circulars No. 132, dated January 30, 1919 (T. D. 2802), and No. 151, dated June 14, 1919 (T. D. 2905).

RECEIPT OF LIBERTY BONDS AND VICTORY NOTES FOR ESTATE OR INHERITANCE TAXES

Department Circular No. 225

[¶ 118] 1. The following regulations are prescribed pursuant to section 14 of the Second Liberty Bond Act, approved September 24, 1917, as amended by Third Liberty Bond Act, approved April 4, 1918, which section is as follows:

Sec. 14. That any bonds of the United States bearing interest at a higher rate than four per centum per annum (whether issued under section one of this Act or upon conversion of bonds issued under this Act or under said Act approved April twenty-fourth, nineteen hundred and seventeen), which have been owned by any person continuously for at least six months prior to the date of his death, and which upon such date constitute part of his estate, shall, under rules and regulations prescribed by the Secretary of the Treasury, be receivable by the United States at par and accrued interest in payment of any estate or inheritance taxes imposed by the United States, under or by virtue of any present or future law upon such estate or the inheritance thereof. Pursuant to section 18(d) of the Second Liberty Bond Act, approved September 24, 1917, as amended by the Victory Liberty Loan Act, approved March 3, 1919, the word "bonds" where it appears in the above section shall be deemed to include notes issued under said section 18. This circular supersedes Treasury Department Circulars No. 132, dated January 30, 1919, and No. 151, dated June 24, 1919.

2. The bonds and notes coming within the provisions of said section at present issued and outstanding are—

Official title.	Date of issue.	*Short title.
(a) First Liberty Loan Converted 4½ per cent bonds of 1932-47.....	May 9, 1918	First 4½'s.
(b) First Liberty Loan Second Converted 4½ per cent bonds of 1932-47.....	Oct. 24, 1918	First Second 4½'s.
(c) Second Liberty Loan Converted 4½ per cent bonds of 1927-42.....	May 9, 1918	Second 4½'s.
(d) Third Liberty Loan 4½ per cent bonds of 1928.....	May 9, 1918	Third 4½'s.
(e) Fourth Liberty Loan 4½ per cent bonds of 1933-38.....	Oct. 24, 1918	Fourth 4½'s.
(f) Victory Liberty Loan 4½ per cent convertible gold notes of 1922-23.....	May 20, 1919	Victory 4½'s.

*Use short titles.

The words "bonds or notes" where they appear in this circular shall be deemed to refer, respectively, to the six issues of Liberty bonds and Victory notes above described. The First Liberty Loan 3½ per cent bonds of 1932-1947, the First Liberty Loan Converted 4 per cent bonds of 1932-1947, the Second Liberty Loan 4 per cent bonds of 1927-1942, and the 3¾ per cent Vic-

tory Liberty Loan notes of 1922-23 are not acceptable in payment of Federal estate or inheritance taxes and are not "bonds or notes" within the meaning of these regulations.

General Provisions

[¶ 119] 3. Bonds or notes of the issues above specified are receivable for such taxes only in case such bonds or notes have been owned by the decedent continuously for at least six months prior to the date of his death and upon such date constitute part of his estate. The reckoning of the required period of ownership will begin on the date when the decedent acquired such bonds or notes by original subscription, by purchase, by conversion of bonds or notes of other issues, or otherwise. For the purpose of reckoning the required period of ownership a fraction of a day shall be considered a whole day. In the case of acquisition of bonds or notes by original subscription, the date of original subscription, or the date of issue of the bonds or notes, whichever shall be later in time, shall be deemed to be the date of acquisition, provided that payment in full on the subscription shall have been completed and the bonds or notes delivered thereon. In the case of acquisition of bonds or notes by purchase, if registered bonds or notes of one of the issues above enumerated as acceptable in payment of Federal estate or inheritance taxes have been duly assigned in blank or for exchange or transfer, and delivered to the decedent assignee pursuant to such assignment, the date of such delivery will be deemed the date of acquisition, although such bonds or notes may not have been presented to the Treasury Department or to a Federal Reserve bank for transfer or exchange until a later date. In the case of acquisition of bonds or notes by conversion of bonds or notes of other issues previously owned, the date of presentation for conversion to the Treasury Department or a Federal Reserve bank will be deemed the date of acquisition. Provided, however, That (a) $4\frac{1}{4}$ per cent bonds of the First Liberty Loan Converted and of the Second Liberty Loan Converted issued on conversion of 4 per cent bonds presented after July 1, 1918, and on or before November 9, 1918, pursuant to the provisions of Treasury Department Circular No. 114, dated May 9, 1918, shall, for the purpose of reckoning the required period of ownership, be deemed to have been acquired on June 15, 1918, in the case of bonds of the First Liberty Loan Converted, and on May 15, 1918, in the case of bonds of the Second Liberty Loan Converted; and (b) 4 per cent bonds of the First Liberty Loan Converted and of the Second Liberty Loan presented for conversion into $4\frac{1}{4}$ per cent bonds on or after March 7, 1919, pursuant to the extension of the conversion privilege under Treasury Department Circular No. 137, as amended and supplemented, shall be deemed to be converted as of the interest payment date next succeeding the date of presentation for conversion, and such next succeeding interest payment date, and not the date of presentation for conversion, will be deemed to be the date of acquisition of such bonds for the purpose of reckoning the required period of ownership. Exchange of coupon for registered bonds or notes, or of registered for coupon bonds or notes, or of bonds or notes of one denomination for bonds or notes of other denominations of the same issue, or of temporary coupon bonds for permanent bonds, whether before or after the death of the decedent, will not prevent the receipt of the bonds or notes issued upon such exchange for estate or inheritance taxes, provided that no change of ownership takes place.

4. Bonds or notes tendered in payment of taxes pursuant to these regulations must be accompanied by an affidavit of one or more of the legal representatives of the estate on Form 760 Revised (Exhibit A), hereto attached, and the collector is authorized to require such further evidence as may be necessary to enable him to determine that the bonds or notes are properly receivable in payment of estate or inheritance taxes pursuant to law and these regulations.

The term "legal representative" where it appears in this circular means the executor or administrator of the decedent's estate or, if there be no executor or administrator, such other person or persons as may be recognized as such under the Estate Tax Law and regulations and entitled to assign any registered bonds or notes owned by the decedent under the regulations of the Treasury Department with regard to United States bonds and notes.

5. On receipt of such bonds or notes, and on making such determination, and provided that the bonds or notes tendered conform to the other provisions of these regulations, the collector shall stamp or plainly write upon the face of each bond or note, over his signature, the following legend in indelible ink:

.....This bond/note has this day been received in

(Date)

payment of estate (or inheritance) taxes on the estate of.....

(Name of decedent)

under authority of law, and will not be redeemed by the United States except for credit of the undersigned., Collector of Internal Revenue for the.....District of.....

Coupons, if any, attached to each bond or note, shall be indelibly stamped or marked "canceled" on the face of each coupon in letters of sufficient size to be plainly legible.

6. Where bonds or notes are owned by a partnership of which the decedent was a member for the six months prior to his death, and have been continuously so owned for at least the six months prior to his death, a fractional part of such bonds or notes proportionate to the deceased partner's share in the capital of the partnership will, for the purposes of these regulations, be deemed to have been owned by him to the extent that such fractional part is actually distributed to his estate upon liquidation: Provided, however, That nothing herein contained shall be deemed to make bonds or notes acceptable in amounts less than some authorized denomination thereof. In addition to the affidavit on Form 760 Revised, proof satisfactory to the Secretary of the Treasury must be presented as to the ownership of the bonds or notes by the partnership and the decedent's interest in the partnership; such proof in general should include affidavits of the surviving partners and of the legal representative of the decedent's estate showing (1) the character and extent of the interest of the decedent in the capital of the partnership, (2) any special interest of the decedent in the bonds or notes, (3) the period of ownership of the bonds or notes by the partnership and the period of the decedent's membership in the partnership, and (4) the distribution of the bonds or notes to the decedent's estate on account of his distributive share in the partnership.

7. Where bonds or notes are held in trust for or otherwise beneficially owned by any person on terms which entitle him unconditionally to demand and receive the legal title or a divided share thereof at any time, he will, for the purposes of these regulations, be deemed the owner of such bonds or notes or such divided share thereof: Provided, however, That nothing herein contained shall be deemed to make bonds or notes acceptable in amounts less than some authorized denomination thereof. In addition to the affidavit on Form 760 Revised, proof satisfactory to the Secretary of the Treasury must be presented as to the ownership of the bonds or notes by the trust and the decedent's interest therein; such proof in general should include affidavits by the trustee and the legal representative of the decedent's estate showing (1) the creation of the trust, the terms and duration thereof, and the interest of the decedent therein; (2) the property included under the trust, and particularly the period of ownership of the bonds or notes by the trust; and (3) the distribution of the bonds or notes to the decedent's estate on account of his share in the trust estate, and the liability to Federal estate (or inheritance) tax in respect to such bonds or notes.

8. The entire tax may be paid in bonds or notes, or the tax may be paid partly in bonds or notes and partly by any other form of payment permitted by law or regulations duly in force. Collectors may not, however, receive bonds or notes the par value and accrued interest of which, computed in accordance with these regulations, aggregate a greater amount than the tax in payment of which the bonds or notes are tendered. After bonds or notes, or cash, have been tendered and duly received in payment of the tax, an election as to the method of payment will be deemed to have been made by the taxpayer, and thereafter requests for the return of such bonds or notes, or cash, and the acceptance of payment in the alternative form will be refused.

Coupon Bonds or Notes

[¶ 120] 9. Coupon bonds or notes received for estate (or inheritance) taxes must be delivered to the collector with all unmatured coupons attached and with all matured coupons detached. Detached matured coupons will not be receivable in payment of such taxes. The portion of the face amount of the current coupon which represents accrued interest to date of receipt for taxes will be determined in the manner prescribed by the interest tables (Exhibits B and C) hereto attached, and such accrued interest will be receivable for estate or inheritance taxes.

10. Temporary coupon bonds, all coupons originally attached to which have matured and been detached, will not be accepted in payment of estate or inheritance taxes pursuant to the provisions of this circular, but must first be exchanged for permanent bonds, pursuant to the provisions of Treasury Department Circular No. 164, dated December 15, 1919, as amended and supplemented: Provided, however, That Fourth Liberty Loan $4\frac{1}{4}$ per cent bonds of 1933-1938, in temporary form, will be acceptable until April 15, 1921, and First Liberty Loan Second Converted $4\frac{1}{4}$ per cent bonds of 1932-1947, in temporary form, will be acceptable until June 15, 1921, in payment of such taxes, accrued interest on such bonds to date of receipt of taxes being covered for the current interest period by the temporary coupon bond; but after such dates, respectively, such temporary bonds must be exchanged for permanent bonds before presentation.

11. Coupon bonds or notes, after being received, and reception indorsed on the bonds or notes as above required, will be deposited by the collector in the Federal Reserve Bank of the district in which his office is located (or Federal Reserve branch bank, as hereinafter provided) as a deposit of the par value with accrued interest, determined as above required. Such bonds or notes, unless delivered direct to the Federal Reserve bank or branch when located in the same city, must be transmitted by registered mail but will not be insured. The collector will transmit with the bonds or notes an accurate schedule on Form 761 Revised (Exhibit D) hereto attached, showing the serial number and denomination of each bond or note transmitted, the issue, the date of receipt for taxes, the amount of accrued interest, and the amount for which credited against estate or inheritance taxes. Such schedule shall be made in quadruplicate, the original to accompany the bonds or notes deposited with the Federal Reserve bank, the duplicate to be transmitted to such Federal Reserve bank under separate cover, the triplicate to be transmitted to the Secretary of the Treasury, Division of Loans and Currency, Washington, and the remaining copy to be retained by the collector. Collectors located in Federal Reserve bank branch cities will deposit coupon bonds or notes received by them hereunder with such branches in accordance with the provisions hereof, and the term "Federal Reserve bank," where it appears herein, includes such branches unless otherwise indicated by the context.

12. The Federal Reserve bank on receipt and examination of such bonds or notes will charge the Treasurer's account with par and accrued interest to date of receipt for taxes as reported by the collector, give credit in the Treasurer's account to the collector for like amount, and issue a certificate of deposit in triplicate on National Bank Form 15, transmitting the original to the Secretary of the Treasury through the Treasurer of the United States with its transcript, and the duplicate and triplicate to the collector, who will forward the duplicate to the Commissioner of Internal Revenue. Such Federal Reserve bank will then physically cancel the bonds or notes and coupons attached, and transmit the same to the Treasurer of the United States with the original or duplicate of the collector's schedule (Form 761 Revised), to which shall be added the Federal Reserve bank's certificate as shown thereon.

13. In the event that bonds or notes in coupon form are tendered to a collector of internal revenue in payment of Federal estate or inheritance taxes hereunder, and after having been received by the collector and stamped or otherwise indorsed by him as provided herein, are found to be not acceptable in payment of such taxes, Federal Reserve banks will issue clean bonds or notes in exchange for such erroneously stamped or indorsed coupon bonds or notes through the denominational exchange account: Provided, however, That the bonds or notes erroneously stamped or indorsed and presented for such exchange must be accompanied by an official certificate on Form 834 (Exhibit E) attached hereto, signed by the collector of internal revenue concerned, to the effect that the stamp or indorsement was affixed in error and that the bonds or notes (which must be specifically described) were not in fact accepted in payment of estate or inheritance taxes. Such exchanges need not be reported specifically to the Department, but the bonds or notes so stamped or indorsed and replaced must be accompanied by the certificate above described when forwarded by the Federal Reserve bank to the Department for credit. In case any such bonds or notes have been deposited with a Federal Reserve bank and charged to the Treasurer's account and credit therein given to the collector therefor, pursuant to paragraph 12 hereof, the Federal Reserve bank will issue new bonds or notes therefor as herein provided through its denominational exchange account, taking the receipt of the collector for such bonds or notes on Form N-2 (Exhibit G) attached hereto, and charging the collector in the Treasurer's account with the amount previously credited therein on account of such bonds or notes, supporting the entry with the receipt on Form N-2.

Registered Bonds or Notes

[¶ 121] 14. Registered bonds or notes are also receivable for estate or inheritance taxes in accordance with these regulations. In addition to requiring the affidavit (Form 760 Revised) the collector shall determine that the registered owner whose name is inscribed on the bond or note is the decedent whose estate is liable to estate (or inheritance) taxes and that the bond or note is presented from the custody or control of the legal representative or representatives of such estate. Such bond or note shall be assigned to "the Secretary of the Treasury for redemption in payment of estate (or inheritance) taxes" by the authorized legal representative or representatives of the deceased registered owner. If an executor or administrator of the decedent's estate has been appointed, such representative or representatives must furnish to the collector a certificate under the seal of the court in which the estate is being administered or a duly certified copy of the letters testamentary or of administration, showing the appointment of such representative or representatives, the date thereof, and that the appointment is still in force. Such certificate or certification of the copy must be dated not more than thirty days prior to its presentation to the collector. All such documents of authority will be

attached to the bond or note and forwarded therewith by the collector as hereinafter provided. Where there are two or more legal representatives, all must unite in the assignment, unless by decree of court or testamentary provision some one or more of them is designated or empowered to dispose of the bonds or notes. If no executor or administrator has been appointed, the assignment must be made by the person or persons entitled to assign the bonds or notes under the regulations of the Treasury Department as to transfers without administration, and the bonds or notes will be accepted subject to submission to the Secretary of the Treasury, Division of Loans and Currency, for specific approval of the transfer. The form printed on the back of the bond or note must be used for assignment, and the assignment must be dated and properly acknowledge as prescribed in the note printed on the back of the bond or note. Officers authorized to take acknowledgements of assignments of registered bonds or notes in addition to those mentioned on the back of the bond are designated in paragraph 16 of Treasury Department Circular No. 141, dated September 15, 1919, and in the general regulations of the Treasury Department with regard to United States bonds and notes. The collector will satisfy himself that the above-mentioned documents of authority and the requisite signatures and acknowledgements are in hand before noting on the bond or note its reception for taxes, as provided in paragraph 5 hereof, but the final determination of the correctness or validity of the assignment will be made by the Secretary of the Treasury, Division of Loans and Currency, at Washington, on receipt of all such bonds or notes and documents, when transmitted as hereinafter provided.

15. By reason of the periodical closing of the transfer books of the Treasury Department for the payment of interest on registered bonds and notes, and the impossibility of stopping payment of interest to the registered holder during the period of such closing, registered bonds and notes will not be receivable in payment of estate or inheritance taxes during the period of closing of the books of the issue in question unless an adjustment of interest is made with the collector as prescribed by paragraph 17 hereof. The books are closed with respect to each issue for one month prior to each interest date. The closed periods with respect to each bond or note may therefore be determined by inspection of the bond or note itself, being one month prior to each interest payment date named thereon, and until the day following such interest payment date. The closed periods for each issue of bonds or notes receivable for estate or inheritance taxes are also stated in the table (Exhibit H) hereto attached.

16. Collectors will examine each registered bond or note tendered for estate or inheritance taxes to determine whether the transfer books of the issue in question are then opened or closed. If the books are then open but are due to close on a date too early to permit the bond or note to be transmitted to the Secretary of the Treasury, Division of Loans and Currency, and to be received by such division prior to the closing date, the collector will advise the Secretary of the Treasury, Division of Loans and Currency, by telegraph at the time of receipt of the bond or note, using form (Exhibit I) hereto attached, and will immediately confirm the same by mail. The Division of Loans and Currency will thereupon stop interest payment on such bond or note. The Secretary reserves the right to require an adjustment of the interest on any registered bond or note tendered to the collector during an open period but received at the Division of Loans and Currency during a closed period of the transfer books of the issue in question. Executors and other legal representatives are urged to tender registered bonds or notes at a time when the transfer books of such bonds or notes are open, or to exchange such bonds or notes for coupon

bonds or notes before the transfer books of such bonds or notes close in order to avoid the necessity for interest adjustments.

17. Registered bonds or notes tendered pursuant to these regulations will be received at par and accrued interest computed in accordance with tables (Exhibits B and C), hereto attached. If such bonds or notes are tendered while the transfer books are open, the interest will be computed from the last preceding interest date as shown thereon to the date of receipt. If they are tendered while the transfer books are closed, since it is impossible to stop the mailing of the next interest check, they may be received at par, with a deduction for the interest from the date of receipt to such next following interest date, computed in accordance with said tables.

18. Registered bonds or notes received pursuant to these regulations, and bearing the stamp or writing required by paragraph 5 hereof, will be transmitted with all accompanying documents of authority to the Secretary of the Treasury, Division of Loans and Currency, Washington, by registered mail, but not insured. The collector will make an accurate schedule on Form 762 Revised (Exhibit J), hereto attached, in triplicate, showing the date of death of the decedent, the serial number and denomination of each bond or note, the issue, accrued interest, the date of receipt for taxes, and the amount for which credited against estate or inheritance taxes. The original of this schedule must accompany the bonds or notes sent to the Secretary of the Treasury, Division of Loans and Currency; the duplicate shall be transmitted to the Secretary of the Treasury, Division of Loans and Currency, under separate cover; and the triplicate shall be retained by the collector.

19. On receipt of such bonds or notes, the Division of Loans and Currency will determine whether the assignment is sufficient and has been properly executed, whether the bonds or notes are of an issue receivable for estate or inheritance taxes hereunder, whether the Department's record of registration is consistent with the affidavit of ownership (Form 760 Revised), and the amount at which such bonds or notes are receivable for estate or inheritance taxes, and will, if it finds the bonds or notes in order, transmit them with its advice on Form L. & C. 122 (Exhibit K), hereto attached, to the Treasurer of the United States for redemption. The Treasurer will thereupon cancel the bonds or notes and issue a certificate of deposit in the name of the collector, in triplicate, and will forward the original to the office of the Secretary of the Treasury, Division of Bookkeeping and Warrants, and transmit the duplicate and triplicate of such certificate to the Commissioner of Internal Revenue, Accounts Division, who will forward the triplicate to the collector.

20. In the event that bonds or notes in registered form are tendered to a collector of internal revenue in payment of Federal estate or inheritance taxes, pursuant hereto, and after having been assigned to the Secretary of the Treasury for redemption in payment of such taxes and received and stamped or otherwise indorsed by the collector as provided herein, are found to be not acceptable in payment of such taxes, the Secretary of the Treasury, or the Federal Reserve banks, will either (1) accept such registered bonds or notes for exchange for new registered bonds or notes registered in the same name, or (2) accept such registered bonds or notes, notwithstanding the assignment to the Secretary of the Treasury and the collector's stamp or indorsement thereon, for transfer or exchange pursuant to such subsequent assignments as may appear on such bonds or notes: Provided, however, in either case, that such registered bonds or notes are accompanied by an official certificate on Form 835 (Exhibit F), attached hereto, signed by the collector of internal revenue concerned, to the same effect as the certificate prescribed in paragraph 13 hereof, with reference to coupon bonds or notes. Registered bonds or notes so tendered in payment of Federal estate or inheritance taxes and erroneously

assigned and stamped or indorsed must be forwarded by the Federal Reserve bank to the Treasury Department, Division of Loans and Currency, in regular course, and when forwarded must be accompanied by the official certificate of the collector.

General.

21. Until certificates of deposit are received by the collector, the amounts of bonds or notes deposited must be carried as "Cash on hand," and not credited as "Collections," as the dates of the certificate of deposit determine the dates of collections.

22. The Secretary of the Treasury may amend or withdraw the foregoing regulations in whole or in part at any time. (Department Circular No. 225, signed by D. F. Houston, Secretary of the Treasury, and dated January 31, 1921.)

TABLE "B"
LIBERTY LOAN

INTEREST TABLE FOR 4¼ PER CENT BONDS

Interest on \$100 at 4¼ per cent per annum, payable semiannually (2½ per cent per half year).

[Tables prepared by Government Actuary.]

NOTE.—Interest on United States bonds is computed on actual days basis within the interest period. For any given interest computation the appropriate column to be used may be determined from the following:

NUMBER OF DAYS IN EACH HALF YEAR.

Half year ending the 15th day of

Regular years—		Days	Leap years—		Days
March, May, July, August.....	181		March, May, July, August.....	182	
April, June.....	182		April, June, October, December..	183	
October, December.....	183		January, February, September,		
November	184		November	184	

Days	Half year of 181 days	Half year of 182 days	Half year of 183 days	Half year of 184 days
1.....	\$0.01174033	\$0.01167582	\$0.01161202	\$0.01154891
2.....	.02348066	.02335165	.02322404	.02309783
3.....	.03522099	.03502747	.03483607	.03464674
4.....	.04696133	.04670330	.04644809	.04619565
5.....	.05870166	.05837912	.05806011	.05774457
6.....	.07044199	.07005495	.06967213	.06929348
7.....	.08218232	.08173077	.08128415	.08084239
8.....	.09392265	.09340659	.09296177	.09239130
9.....	.10566298	.10508242	.10450820	.10394022
10.....	.11740331	.11675824	.11612022	.11548913
11.....	.12914365	.12843407	.12773224	.12703804
12.....	.14088398	.14010989	.13934426	.13855696
13.....	.15262431	.15178571	.15095628	.15013587
14.....	.16436464	.16346154	.16256831	.16168478
15.....	.17610497	.17513736	.17418033	.17323370
16.....	.18784530	.18681319	.18579235	.18478261
17.....	.19958564	.19848901	.19740437	.19633152
18.....	.21132597	.21016454	.20901639	.20788043
19.....	.22306630	.22184066	.22062842	.21942935
20.....	.23480663	.23351648	.23224044	.23097826
21.....	.24654696	.24519231	.24385246	.24252717
22.....	.25828729	.25686813	.25546448	.25407609
23.....	.27002762	.26854396	.26707650	.26562500
24.....	.28176796	.28021978	.27868852	.27717391
25.....	.29350829	.29189560	.29030055	.28872283
26.....	.30524862	.30357143	.30191257	.30027174
27.....	.31698895	.31524725	.31352459	.31182065
28.....	.32872928	.32692308	.32513661	.32336957
29.....	.34046961	.33859890	.33674863	.33491848
30.....	.35220994	.35027473	.34836066	.34646739
31.....	.36395028	.36195055	.35997268	.35801630
32.....	.37569061	.37362637	.37158470	.36956522
33.....	.38743094	.38530220	.38319672	.38111413
34.....	.39917127	.39697802	.39480874	.39266304
35.....	.41091160	.40865385	.40642077	.40421196
36.....	.42265193	.42032967	.41803279	.41576087
37.....	.43439227	.43200549	.42964481	.42730978
38.....	.44613260	.44368132	.44125683	.43885870
39.....	.45787293	.45535714	.45286885	.45040761
40.....	.46961326	.46703297	.46448087	.46195652
41.....	.48135359	.47870879	.47609290	.47350543
42.....	.49309392	.49038462	.48770492	.48505435
43.....	.50483425	.50206044	.49931694	.49660326
44.....	.51657459	.51373626	.51092896	.50815217
45.....	.52831492	.52541209	.52254098	.51970109
46.....	.54005526	.53708791	.53415301	.53125000
47.....	.55179559	.54876374	.54576503	.54279891
48.....	.56353591	.56043956	.55737705	.55434783
49.....	.57527624	.57211538	.56898907	.56589674
50.....	.58701657	.58379121	.58060109	.57744565

Days	Half year of 181 days	Half year of 182 days	Half year of 183 days	Half year of 184 days
51	\$0.59875691	\$0.59546703	\$0.59221311	\$0.58899457
52	.61049724	.60714286	.60382514	.60054348
53	.62223757	.61881868	.61543716	.61209239
54	.63397790	.63049451	.62704918	.62364130
55	.64571823	.64217033	.63866120	.63519022
56	.65745856	.65384615	.65027322	.64673913
57	.66919889	.66552198	.66188525	.65828804
58	.68093923	.67719780	.67349727	.66983696
59	.69267956	.68887363	.68510929	.68138587
60	.70441989	.70054945	.69672131	.69293478
61	.71616022	.71222527	.70833333	.70448370
62	.72790055	.72390110	.71994536	.71603261
63	.73964088	.73557692	.73155738	.72758152
64	.75138122	.74725275	.74316940	.73913043
65	.76312155	.75892857	.75478142	.75067935
66	.77486188	.77060440	.76639344	.76222826
67	.78660221	.78228022	.77800546	.77377717
68	.79834254	.79395604	.78961749	.78532609
69	.81008287	.80563187	.80122951	.79687500
70	.82182320	.81730769	.81284153	.80842391
71	.83356354	.82898352	.82445355	.81997283
72	.84530387	.84065934	.83606557	.83152174
73	.85704420	.85233517	.84777760	.84307065
74	.86878453	.86401099	.85928962	.85461956
75	.88052486	.87568681	.87090164	.86616848
76	.89226519	.88736264	.88251366	.87771739
77	.90400552	.89903846	.89412568	.88926630
78	.91574586	.91071429	.90573771	.90081522
79	.92748619	.92239011	.91734973	.91236413
80	.93922652	.93406593	.92896175	.92391304
81	.95096685	.94574176	.94057377	.93546196
82	.96270718	.95741758	.95218579	.94701087
83	.97444751	.96909341	.96379781	.95855978
84	.98618785	.98076923	.97540984	.97010870
85	.99792818	.99244506	.98702186	.98165761
86	1.00966851	1.00412088	.99863388	.99320652
87	1.02140884	1.01579670	1.01024590	1.00475543
88	1.03314917	1.02747253	1.02185792	1.01630435
89	1.04488950	1.03914835	1.03346995	1.02785326
90	1.05662983	1.05052418	1.04508197	1.03940217
91	1.06837017	1.06250000	1.05669399	1.05095109
92	1.08011050	1.07417582	1.06830601	1.06250000
93	1.09185083	1.08585165	1.07991803	1.07404891
94	1.10359116	1.09752747	1.09153005	1.08559783
95	1.11533149	1.10920330	1.10314208	1.09714674
96	1.12707182	1.12087912	1.11475410	1.10869565
97	1.13881215	1.13255495	1.12636612	1.12024456
98	1.15055249	1.14423077	1.13797814	1.13179348
99	1.16229282	1.15590659	1.14959016	1.14334239
100	1.17403315	1.16758242	1.16120219	1.15489130
101	1.18577348	1.17925824	1.17281421	1.16644022
102	1.19751381	1.19093407	1.18442623	1.17798913
103	1.20925414	1.20260989	1.19603825	1.18953804
104	1.22099447	1.21428571	1.20765027	1.20108696
105	1.23273481	1.22596154	1.21926230	1.21263587
106	1.24447514	1.23763736	1.23087432	1.22418478
107	1.25621547	1.24931319	1.24245634	1.23573370
108	1.26795580	1.26098901	1.25409836	1.24728261
109	1.27969613	1.27266484	1.26571038	1.25883152
110	1.29143646	1.28434066	1.27732240	1.27038043
111	1.30317679	1.29601648	1.28893443	1.28192935
112	1.31491713	1.30769231	1.30054645	1.29347826
113	1.32665746	1.31936813	1.31215847	1.30502717
114	1.33839779	1.33104396	1.32377049	1.31657609
115	1.35013812	1.34271978	1.33538251	1.32812500
116	1.36187845	1.35439560	1.34699454	1.33967391
117	1.37361878	1.36607143	1.35860656	1.35122283
118	1.38535911	1.37774725	1.37021858	1.36277174
119	1.39709945	1.38942308	1.38183060	1.37432065
120	1.40883978	1.40109890	1.39344262	1.38586956
121	1.42058011	1.41277473	1.40505465	1.39741848
122	1.43232044	1.42445055	1.41666667	1.40896739
123	1.44406077	1.4361267	1.42827869	1.42051630
124	1.45580110	1.44780220	1.43989071	1.43206522
125	1.46754144	1.45947802	1.45150273	1.44361413

Days	Half year of 181 days	Half year of 182 days	Half year of 183 days	Half year of 184 days
126	\$1.47928177	\$1.47115385	\$1.46311475	\$1.45516304
127	1.49102210	1.48282967	1.47472678	1.46671196
128	1.50276243	1.49450550	1.48633880	1.47826087
129	1.51450276	1.50618132	1.49795082	1.48980978
130	1.52624309	1.51785714	1.50956284	1.50135870
131	1.53798342	1.52953297	1.52117486	1.51290761
132	1.54972376	1.54120879	1.53278689	1.52445652
133	1.56146409	1.55288462	1.54439891	1.53600543
134	1.57320442	1.56456044	1.55601093	1.54755435
135	1.58494475	1.57623626	1.56762295	1.55910326
136	1.59668508	1.58791209	1.57923497	1.57065217
137	1.60842541	1.59958791	1.59084699	1.58220109
138	1.62016574	1.61126374	1.60245902	1.59375000
139	1.63190608	1.62293956	1.61407104	1.60529891
140	1.64364641	1.63461539	1.62568306	1.61684783
141	1.65538674	1.64629121	1.63729508	1.62839674
142	1.66712707	1.65796703	1.64890710	1.63994565
143	1.67886740	1.66964286	1.66051913	1.65149456
144	1.69060773	1.68131868	1.67213115	1.66304348
145	1.70234807	1.69299451	1.68374317	1.67459239
146	1.71408840	1.70467033	1.69535519	1.68614130
147	1.72582873	1.71634615	1.70696721	1.69769022
148	1.73756906	1.72802198	1.71857924	1.70923913
149	1.74930939	1.73969780	1.73019126	1.72078804
150	1.76104972	1.75137363	1.74180328	1.73233696
151	1.77279005	1.76304945	1.75341530	1.74388587
152	1.78453039	1.77472528	1.76502732	1.75543478
153	1.79627072	1.78640110	1.77663934	1.76698370
154	1.80801105	1.79807692	1.78825137	1.77853261
155	1.81975138	1.80975275	1.79986339	1.79008152
156	1.83149171	1.82142857	1.81147541	1.80163043
157	1.84323204	1.83310440	1.82308743	1.81317935
158	1.85497238	1.84478022	1.83469945	1.82472826
159	1.86671271	1.85645604	1.84631148	1.83627717
160	1.87845304	1.86813187	1.85792350	1.84782609
161	1.89019337	1.87980769	1.86953552	1.85937500
162	1.90193370	1.89148352	1.88114754	1.87092391
163	1.91367403	1.90315934	1.89275956	1.88247283
164	1.92541436	1.91483517	1.90437159	1.89402174
165	1.93715470	1.92651099	1.91598361	1.90557065
166	1.94889503	1.93818681	1.92759563	1.91711956
167	1.96063536	1.94986264	1.93920765	1.92866848
168	1.97237569	1.96153846	1.95081967	1.94021739
169	1.98411602	1.97321429	1.96243169	1.95176630
170	1.99585635	1.98489011	1.97404372	1.96331522
171	2.00759668	1.99656593	1.98565574	1.97486413
172	2.01933702	2.00824176	1.99726776	1.98641304
173	2.03107735	2.01991758	2.00887978	1.99796196
174	2.04281768	2.03159341	2.02049180	2.00951087
175	2.05455801	2.04326923	2.03210383	2.02105978
176	2.06629834	2.05494506	2.04371585	2.03260870
177	2.07803867	2.06662088	2.05532787	2.04415761
178	2.08977901	2.07829670	2.06693989	2.05570652
179	2.10151934	2.08997253	2.07855191	2.06725543
180	2.11325967	2.10164835	2.09016393	2.07880435
181	2.12500000	2.11332418	2.10177596	2.09035326
182	2.13674033	2.12500000	2.11338798	2.10190217
183	2.14848066	2.13674033	2.12500000	2.11345109
184	2.16022099	2.14848066	2.13674033	2.12500000

EXAMPLE.

\$10,850 Third $4\frac{1}{4}$'s, tendered in payment of estate taxes, January 5, 1921.

Interest payment dates on Third $4\frac{1}{4}$'s are shown on the face thereof to be March 15 and September 15 in each year.

Current half year interest period, therefore, ends March 15, 1921.

The year 1921 being a "regular" (not a "leap") year, find "March" in the list at head of table under "Regular years." This list shows that the half year ending March 15, in a regular year has 181 days.

Compute number of days since the beginning of such half year that have expired to date of tender of bond, thus:

1920—	
September 15 to September 30.....	15
October	31
November	30
December	31
1921—	
January	5
Total	112

Enter table headed "Half year of 181 days" (second column) and seek in that column the amount of interest on \$100 for 112 days. This will be found opposite the figure "112" (days) in first column, and proves to be \$1,31491713, which is the decimal for \$100 for 112 days. The amount of bonds presented being \$10,580, the decimal above stated must be multiplied by 108.5; the result is \$142.6685, which is the amount of accrued interest due on January 5, 1921, on \$10,850 Third 4¼s; accordingly the bonds are worth for estate taxes \$10,992.67. Fractions of cents, if less than ½ cent, will be disregarded; if ½ cent or more, will be counted as 1 cent.

Exhibit C.

VICTORY LIBERTY LOAN

Form L. & C. 226

Interest Table for 4¾ Per Cent Victory Notes Received for Estate of Inheritance Taxes.
[Prepared by Government Actuary.]

NOTE.—Interest on Victory notes is computed on actual day's basis within the interest period. For any given computation, the appropriate column to be used may be determined from the following:

NUMBER OF DAYS IN EACH HALF YEAR

Half year ending the 15th day of.....

Regular years—	Days	Leap years—	Days
June	182	June	183
December	183	December	183

Interest on \$100 at 4¾ per cent per annum, payable semi-annually (2¾ per cent per half year).

Days	Half year of 182 days	Half year of 183 days	Days	Half year of 182 days	Half year of 183 days
1	\$0 0130495	\$0 0129781	31	\$0 4045330	\$0 4023224
2	.0260989	.0259563	32	.4175824	.4153005
3	.0391484	.0389344	33	.4306319	.4282787
4	.0521978	.0519126	34	.4436813	.4412568
5	.0652473	.0648907	35	.4567308	.4542350
6	.0782967	.0778689	36	.4697802	.4672131
7	.0913462	.0908470	37	.4828297	.4801913
8	.1043956	.1038251	38	.4958791	.4931694
9	.1174451	.1168033	39	.5089288	.5061475
10	.1304945	.1297814	40	.5219780	.5191257
11	.1435440	.1427596	41	.5350275	.5321038
12	.1565934	.1557377	42	.5480769	.5450820
13	.1696429	.1687158	43	.5611264	.5580601
14	.1826923	.1816940	44	.5741758	.5710382
15	.1957418	.1946721	45	.5872253	.5840164
16	.2087912	.2076503	46	.6002747	.5969945
17	.2218407	.2206294	47	.6133242	.6099727
18	.2348901	.2336066	48	.6263736	.6229508
19	.2479396	.2465847	49	.6394231	.6359290
20	.2609890	.2595628	50	.6524725	.6489071
21	.2740385	.2725410	51	.6655220	.6618852
22	.2870879	.2855191	52	.6785714	.6748634
23	.3001374	.2984973	53	.6916209	.6878415
24	.3131868	.3114754	54	.7046703	.7008197
25	.3262363	.3244536	55	.7177198	.7137978
26	.3392857	.3374317	56	.7307692	.7267760
27	.3523352	.3504098	57	.7438187	.7397541
28	.3653846	.3633880	58	.7568681	.7527322
29	.3784341	.3763661	59	.7699176	.7657104
30	.3914835	.3893443	60	.7829670	.7786885

Days	Half year of 182 days	Half year of 183 days	Days	Half year of 182 days	Half year of 183 days
61	\$0.7960165	\$0.7916667	123	\$1.6050824	\$1.5963115
62	.8090659	.8046448	124	1.6181319	1.6092896
63	.8221154	.8176230	125	1.6311813	1.6222678
64	.8351648	.8306011			
65	.8482143	.8435792	126	1.6442308	1.6352459
			127	1.6572802	1.6482240
66	.8612637	.8565574	128	1.6703297	1.6612022
67	.8743132	.8696535	129	1.6833791	1.6741803
68	.8873626	.8825137	130	1.6964286	1.6871585
69	.9004121	.8954918			
70	.9134615	.9084699	131	1.7094780	1.7001366
			132	1.7225275	1.7131147
71	.9265110	.9214481	133	1.7355769	1.7260929
72	.9395604	.9344262	134	1.7486264	1.7390710
73	.9526099	.9474044	135	1.7616758	1.7520492
74	.9656593	.9603825			
75	.9787088	.9733607	136	1.7747253	1.7650273
			137	1.7877747	1.7780055
76	.9917582	.9863388	138	1.8008242	1.7909836
77	1.0048077	.9993169	139	1.8138736	1.8039617
78	1.0178571	1.0122951	140	1.8269231	1.8169399
79	1.0309066	1.0252732			
80	1.0439560	1.0382514	141	1.8399725	1.8299180
			142	1.8530220	1.8428962
81	1.0570055	1.0512295	143	1.8660714	1.8558743
82	1.0700549	1.0642077	144	1.8791209	1.8688525
83	1.0831044	1.0771858	145	1.8921703	1.8818306
84	1.0961538	1.0901639			
85	1.1092033	1.1031421	146	1.9052198	1.8948087
			147	1.9182692	1.9077869
86	1.1222527	1.1161202	148	1.9313187	1.9207650
87	1.1353022	1.1290984	149	1.9443681	1.9337432
88	1.1483516	1.1420765	150	1.9574176	1.9467213
89	1.1614011	1.1550546			
90	1.1744505	1.1680328	151	1.9704670	1.9596995
			152	1.9835165	1.9726776
91	1.1875000	1.1810109	153	1.9965659	1.9856557
92	1.2005495	1.1939891	154	2.0096154	1.9986339
93	1.2135989	1.2069672	155	2.0226648	2.0116120
94	1.2266484	1.2199454			
95	1.2396978	1.2329235	156	2.0357143	2.0245902
			157	2.0487637	2.0375683
96	1.2527473	1.2459016	158	2.0618132	2.0505464
97	1.2657967	1.2588798	159	2.0748626	2.0635246
98	1.2788462	1.2718579	160	2.0879121	2.0765027
99	1.2918956	1.2848361			
100	1.3049451	1.2978142	161	2.1009615	2.0894809
			162	2.1140110	2.1024590
101	1.3179945	1.3107923	163	2.1270604	2.1154372
102	1.3310440	1.3237705	164	2.1401099	2.1284153
103	1.3440934	1.3367486	165	2.1531593	2.1413934
104	1.3571429	1.3497268			
105	1.3701923	1.3627049	166	2.1662088	2.1543716
			167	2.1792582	2.1673497
106	1.3832418	1.3756831	168	2.1923077	2.1803279
107	1.3962912	1.3886612	169	2.2053571	2.1933060
108	1.4093407	1.4016393	170	2.2184066	2.2062842
109	1.4223901	1.4146175			
110	1.4354396	1.4275956	171	2.2314560	2.2192623
			172	2.2445055	2.2322404
111	1.4484890	1.4405738	173	2.2575549	2.2452186
112	1.4615385	1.4535519	174	2.2706044	2.2581967
113	1.4745879	1.4665301	175	2.2836538	2.2711749
114	1.4876374	1.4795082			
115	1.5006868	1.4924863	176	2.2967033	2.2841530
			177	2.3097527	2.2971311
116	1.5137363	1.5054645	178	2.3228022	2.3101093
117	1.5267857	1.5184426	179	2.3358516	2.3230874
118	1.5398352	1.5314208	180	2.3489011	2.3360656
119	1.5528846	1.5443989			
120	1.5659341	1.5573770	181	2.3619505	2.3490437
			182	2.3750000	2.3620219
121	1.5789835	1.5703552	183	.....	2.3750000
122	1.5920330	1.5833333			

EXAMPLE.

\$11,350 $4\frac{3}{4}$ per cent Victory note tendered in payment of estate taxes, January 5, 1921.

Interest payment dates on Victory notes are shown on the face thereof to be June 15 and December 15 in each year, and at maturity.

Current half-year interest period therefore ends June 15, 1920.

The year 1921 being a regular year, find "June" in the list at head of table under "Regular year." This list shows that the half year ending June 15, in a regular year, has 182 days.

Compute number of days since the beginning of such half year that have expired to date of tender of note, thus:

1920—	Days
December 15 to December 31.....	16
1921—	
January	5
Total	21

Enter table headed "Half year of 182 days" (second column) and seek in that column the amount of interest on \$100 for 21 days. This will be found opposite the figure "21" (days) in the first column, and proves to be \$0.2740385, which is the decimal for \$100 for 21 days.

The amount of notes presented being \$11,350, the decimal above stated must be multiplied by 113.5; the result is \$31.1034, which is the amount of accrued interest due on January 5, 1921, on \$11,350 Victory 4 $\frac{3}{4}$ s—accordingly, the notes are worth for estate taxes, \$11,381.10.

Fractions of cents, if less than $\frac{1}{2}$ cent, will be disregarded; if $\frac{1}{2}$ cent or more, will be counted as 1 cent.

Exhibit H.

Periods During Which Transfer Books Are Closed for the Various Issues of Liberty Bonds and Victory Notes Receivable for Estate or Inheritance Taxes.

Title of bonds/notes.	Short title.	Closed periods.	
		From close of business.	To opening of business.
First Liberty Loan converted 4 $\frac{1}{2}$ per cent bonds of 1932-47.....	First 4 $\frac{1}{2}$'s	May 15	June 16
First Liberty Loan second converted 4 $\frac{1}{2}$ per cent bonds of 1932-47.....	First Second 4 $\frac{1}{2}$'s	Nov. 15	Dec. 16
Second Liberty Loan converted 4 $\frac{1}{2}$ per cent bonds of 1927-42.....	Second 4 $\frac{1}{2}$'s	Apr. 15	May 16
Third Liberty Loan 4 $\frac{1}{2}$ per cent bonds of 1928.....	Third 4 $\frac{1}{2}$'s	Oct. 15	Nov. 16
Fourth Liberty Loan 4 $\frac{1}{2}$ per cent bonds of 1933-38.....	Fourth 4 $\frac{1}{2}$'s	Feb. 15	Mar. 16
		Aug. 15	Sept. 16
		Mar. 15	Apr. 16
		Sept. 15	Oct. 16
		May 15	June 16
		Nov. 15	Dec. 16
		and from close of business Apr. 20, 1923.	
Victory Liberty Loan 4 $\frac{1}{2}$ per cent convertible gold notes of 1922-23.....	Victory 4 $\frac{1}{2}$'s		

NOTE.—If the closing date falls on a Sunday or a legal holiday the transfer books will close on the preceding day; if the opening date falls on Sunday or legal holiday the books will open on the following day.

(Exhibits A, B, C, and H, above, from Department Circular No. 225, signed by D. F. Houston, Secretary of the Treasury, and dated January 31, 1921.)

[¶ 122] Art. 92. **The executor shall pay the tax.**—The statute provides that the executor shall pay the tax. This duty applies to the tax upon the transfer of the entire estate, including property which will not come into the possession of the executor or administrator. As to the personal liability of the executor, see Article 113.

[¶ 123] Art. 93. **Extension of time for payment.**—In any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, extensions of time will be granted for the payment of the tax for a period not to exceed in all

three years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, where it is evident that the payment of the tax within the statutory period would cause the estate serious financial loss. No extension shall be for more than one year, and a substantial payment shall be made before each extension. Application for extension of time for payment should be filed with the collector, and should contain a full statement of the facts upon which the application is based. The collector will refer the application to the Commissioner, with suitable recommendations.

The extension of time for the payment of the tax should not be confused with extension of time for filing the return. An extension of time to pay the tax does not relieve from the duty of filing the return within one year from the date of death. An extension of time for tax payment will not operate to prevent the accrual of interest upon the tax.

[¶ 124] Art. 94. **Interest on unpaid tax.**—The statute provides that, if the tax is not paid within one year and 180 days after the decedent's death, interest at six per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax. This provision applies to the original amount of tax shown to be due by the return accepted by the collector. It applies in all cases in which penalties have not accrued under the Revenue Act of 1916. (See Art. 120.)

ADJUSTMENT OF TAX—INTEREST.

[¶ 125] Sec. 407. That the executor shall pay the tax to the collector or deputy collector. If the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the collector shall notify the executor of the amount of such excess and demand payment thereof. If such excess part of the tax is not paid within thirty days after such notification, interest shall be added thereto at the rate of 10 per centum per annum from the expiration of such thirty days' period until paid, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

[¶ 126] Art. 95. **Adjustment of tax after investigation.**—An investigation of every return for estate tax will be made by an internal-revenue officer, and the tax liability of the estate will be finally determined by the Commissioner upon the basis of such investigation. If at the time the Commissioner's determination is made the tax has been paid upon the basis of the return, an adjustment will be made of the amount of tax. If the amount of tax already paid exceeds the amount of tax as finally determined, the Commissioner will refund such excess payment to the executor. If the amount of tax as finally determined exceeds the amount of tax already paid, the collector will notify the executor of the amount of the unpaid balance of the tax and will demand payment thereof. Payment should be made by the executor immediately upon the receipt of such notification. Where the investigation of the return shows that no further tax is due, the executor will be notified to this effect. Until the receipt of such notification, he should reserve a sufficient portion of the estate to satisfy any excess tax.

[¶ 127] Art. 96. **Interest on additional tax.**—If an unpaid balance of tax is found to be due by the Commissioner after investigation, the statute provides that interest shall be added to the amount of such excess part of the

tax at the rate of ten per centum from the expiration of 30 days after notification to the executor, provided the tax is not paid within such 30-day period. This interest will not begin to accrue, however, until the expiration of one year and 180 days after the decedent's death. (See Art. 94.)

If a return is filed containing a gross or fraudulent misstatement of fact, and payment made of the tax shown to be due thereby, such payment will not be considered payment in full within the meaning of the statute. (See Art. 90.) Consequently, in such a case, interest upon the unpaid balance of tax, determined after investigation, will be added at the rate of six per centum per annum from the expiration of one year after the decedent's death to the expiration of 30 days from notification, and thereafter at the rate of ten per centum per annum until paid.

COLLECTION OF TAX.

[¶ 128] Sec. 408. That if the tax herein imposed is not paid within 180 days after it is due, the collector shall, unless there is reasonable cause for further delay, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. * * *

[¶ 129] Art. 97. **Remedy not exclusive.**—The remedy by action, here provided for, is not exclusive. For other available remedies for the collection of the tax, see Article 116.

REIMBURSEMENT.

[¶ 130] Sec. 408. * * * If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

[¶ 131] Art. 98. **Right to reimbursement not enforceable by bureau.**—Two rights are here given. Persons in possession of property, and paying the tax, are entitled to reimbursement, either out of the undisturbed estate or by contribution from other beneficiaries, of any excess of the amount paid over the amount of the tax upon the particular property in their possession. The executor is also entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Bureau to collect the tax from any person, or out of any property, liable therefor. The Bureau may not be required to apportion the tax among the persons liable. For example, where a transfer has been made in contemplation of death, the Bureau may hold both the executor and the transferee liable with respect to the tax upon the property transferred. In such case, if the tax is paid by the executor, he may not look to the Bureau for relief by refund of part of the tax.

LIEN.

[¶ 132] **Sec. 409.** That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed.

[¶ 133] **Art. 99. Property subject to lien.**—This lien attaches to every part of the gross estate, whether or not the property comes into the custody or control of the executor. The only property divested of the lien is such part as is used to pay charges against the estate and administration expenses allowed by the court which administers the estate. With this exception, the lien can only be divested by payment. It attaches to the extent both of the original tax shown to be due by the return and of any additional tax found to be due upon investigation. Payment of the entire tax is necessary in order to destroy the lien.

[¶ 134] **Art. 100. Release of lien.**—The statute provides that, if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. In most cases the receipts issued by the collector constitute sufficient acquittance.

The tax will be considered fully discharged for the purpose of the issuance of a certificate only when investigation has been completed, and payment of the excess tax determined to be due, if any, has been made. A certificate of release of lien may be issued by the Commissioner under these circumstances upon any or all property of the estate, upon the filing by the executor of an application in duplicate on Form 791. The form must contain all the information called for.

Where the tax liability has not been fully discharged, as provided above, no general certificate of release will be granted, but releases of lien upon particular items of property will be issued upon the filing with the Commissioner of such security, if any, as he may require. Where security is required, a corporate indemnity bond must be furnished, or Liberty Bonds, or other bonds of the United States, must be deposited with the collector. In lieu of such security, the Commissioner may in any case issue the release upon payment of the estimated tax upon the transfer of the property released, computed at the highest rate applicable to the estate. If, upon consideration of the application, the Commissioner finds the issuance of the certificate to be warranted, the collector will notify the executor of the amount of the bond, as fixed by the Commissioner.

[¶ 135] **NOTE: Transfer of stock; lien on stock and release of lien.**—In a letter, dated June 26, 1920, to an inquiring taxpayer Deputy Commissioner James Hagerman, Jr., states that it is the ruling of the Bureau that under Sec. 409 only the following parts of a decedent's gross estate are divested of the lien: Such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof; and the value of any property included in the gross estate which was transferred, or with respect to which a trust was created by the decedent, in contemplation of or intended to take effect in possession or enjoyment at or after his death (except where the making of such transfer or the creating of such trust by the decedent constituted a bona fide sale for a fair

consideration in money or money's worth), where the transferee or a trustee has sold such property to a bona fide purchaser for a fair consideration in money or money's worth. No other part of the gross estate is divested of the lien by virtue of Section 409 of the said Act, nor may it be divested of such lien except by discharge of the tax liability of the estate or by a certificate issued by the Commissioner of Internal Revenue releasing it from the lien.

It will be seen from the foregoing, therefore, that any stock of a corporation which was owned by a decedent on the date of his death is not divested of the lien by virtue of anything contained in Section 409 of the Revenue Act of 1918.

This Bureau is at all times willing in any proper case to issue a release of lien with respect to any part of the gross estate where the tax liability of the estate has been discharged or provided for to the satisfaction of the Commissioner. Any transfer made by an executor of property forming a part of the gross estate of a decedent whose estate is liable for the payment of Federal estate tax, or the transfer by any person having in his possession property forming a part of such gross estate, except as provided in Section 409 aforesaid, will not operate to divest such property of the lien. (Letter to The Corporation Trust Company, signed by Deputy Commissioner James Hagerman, Jr., and dated June 26, 1920.)

REMEDY AGAINST TRANSFEREE AND INSURANCE BENEFICIARY.

[¶ 136] **Sec. 409.** * * * If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

[¶ 137] **Art. 101. Remedy in case of property transferred by decedent, or of individual insurance.**—The amounts of the lien and of the personal liability of the transferee, trustee, or insurance beneficiary are limited to the amount of the tax upon the transfer of the particular property in the possession of the person liable. Where the transferee or trustee sells the property to a bona fide purchaser for a fair consideration in money or money's worth, the lien upon such property is divested; but there is substituted a lien upon all of the property of the transferee or trustee, except such part as may be sold to a bona fide purchaser for a valuable consideration.

PENALTIES.

[¶ 138] **Sec. 410.** That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

[¶ 139] **Revised Statutes, Sec. 3176 (Comp. Sts., 1916, Sec. 5899)** * * * In case of any failure to make and file a return or list within the time prescribed by

law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not a willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

[¶ 140] Art. 102. Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the estate tax law:

(1) A specific penalty, to be recovered by suit, unless adjusted by an offer in compromise; and

(2) A penalty of a certain percentage of the tax, to be added to the tax and collected in the same manner as the tax.

In any case of delinquency for which more than one penalty is provided the Government may impose either or both penalties.

[¶ 141] Art. 103. Penalties for false and fraudulent notice or return.—Where statements in the 60-day notice or in the return are knowingly and willfully false, the person making them is subject to a penalty of \$5,000, or imprisonment for one year, or both; and, for the false return, 50 per cent may be added to the amount of the tax.

[¶ 142] Art. 104. Penalty for failure to file notice or return.—For failure to file the 60-day notice or the return within the time prescribed, the person in default is subject to a penalty not to exceed \$500; and, for the failure to file the return, 25 per cent may be added to the amount of the tax. Where it appears, however, that the failure to file the return was due to a reasonable cause and not to willful neglect, no addition is made to the tax.

[¶ 143] Art. 105. Penalty for failure to exhibit records or property.—Where a person in possession or control of any record, file, or paper, supposed to contain information relating to the estate, fails to exhibit the same, upon the request of the Commissioner or any collector, he is liable to a penalty not to exceed \$500, to be recovered by civil action. He must comply with such a request whether or not he believes that the documents contain information relating to the estate. A person in possession of property forming part of the gross estate, and refusing to exhibit the same upon the request of the Commissioner or a collector, is subject to a similar penalty.

CLAIMS FOR ABATEMENT AND REFUND.

[¶ 144] Revised Statutes, Sec. 3220 (Comp. Sts., 1916, Sec. 5944). The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.

[¶ 145] Revised Statutes, Sec. 3225 (Comp. Sts., 1916, Sec. 5948). When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation.

[¶ 146] Art. 106. General provisions.—Under these provisions of law two forms of relief are afforded the executor in cases where he believes that an excessive amount of tax has been assessed against or paid by him, either upon the basis of the return or of the investigation conducted by the Bureau. The two forms of relief are:

(1) Claim for abatement on Form 47 where the tax has been assessed but not paid.

(2) Claim for refund on Form 46 where the tax has been paid.

[¶ 147] Art. 107. Claim for abatement.—Claims for the abatement of taxes or penalties illegally assessed must be made upon Form 47, and must be sustained by the affidavits of the parties against whom the taxes were assessed or of other parties cognizant of the facts. When a tax has been assessed, the presumption is that the assessment is correct; and the burden of showing that it was improperly or illegally assessed rests upon the applicant for abatement. The affidavit must therefore contain a full and explicit statement of all the material facts relating to the claim in support of which they are offered and which are essential to proper consideration. Nothing should be left to inference, but all the facts relied upon should appear upon the papers themselves. The filing of a claim for the abatement of a tax alleged to have been erroneously assessed does not necessarily operate as a suspension of the collection of the tax. The collector may collect the tax if he thinks it necessary, and leave the taxpayer to his remedy of a claim for refund.

[¶ 148] Art. 108. Accrual of interest as affected by abatement claim.—Where a claim for abatement is rejected, the making of the application does not affect the running of interest. The allowance of the claim, however, in whole or part, discharges all interest obligations upon the portion of the claim allowed. The same rules apply where, upon the request of the executor, a reinvestigation is made of the amount of an additional tax.

[¶ 149] Art. 109. Limitation of time to file claim for abatement of excess tax.—If it is desired to file claim for abatement of the excess amount of tax disclosed upon investigation, such claim should be filed with the collector within 30 days of receipt of the Commissioner's letter of notification. After that period the claim will not be considered, but the tax must be paid, and adjustment made by claim for refund.

[¶ 150] Art. 110. Claim for refund.—Claims for refund of assessed taxes and penalties must be made on Form 46. In this case, as in the case of claims for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. With the claim should be presented, in addition to the evidence:

(1) Collector's receipt evidencing payment of tax.

(2) Where the claim is made by the executor or administrator, a certified copy of the letters testamentary or of administration, and a certificate that the appointment remains in full force and effect.

(3) Where the executor or administrator has been discharged, a certified copy of the decree discharging him, and evidence as to the persons entitled to receive the refund, setting forth their names. Where the claim is made on behalf of a number of persons, there should be furnished a power of attorney duly executed by all the beneficiaries showing the claimant's authority to act in their behalf.

[¶ 151] Art. 111. Payment of claims.—Warrants in payment of claims allowed will be drawn in the names of the parties entitled to the money, and will, unless otherwise directed, be sent by the Treasurer of the United States directly to the proper parties, or their duly authorized attorneys or agents;

but if the claimants are indebted to the United States for taxes such taxes must be paid before the warrants are delivered.

POWER TO COMPROMISE OR REMIT PENALTIES.

[¶ 152] **Revised Statutes, Sec. 3229** (Comp. Sts., Sec. 5952). The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

[¶ 153] **Revised Statutes, Sec. 5292** (Comp. Sts., 1916, Sec. 10,130). Whenever any person who shall have incurred any fine, penalty, or forfeiture, or disability * * * shall prefer his petition to the judge of the district in which such fine, penalty, or forfeiture, or disability has accrued, truly and particularly setting forth the circumstances of his case, and shall pray that the same may be mitigated or remitted, the judge shall inquire, in a summary manner, into the circumstances of the case; first causing reasonable notice to be given to the person claiming such fine, penalty, or forfeiture, and to the attorney of the United States for such district, that each may have an opportunity of showing cause against the mitigation or remission thereof; and shall cause the facts appearing upon such inquiry to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treasury. The Secretary shall thereupon have power to mitigate or remit such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if, in his opinion, the same was incurred without willful negligence, or any intention of fraud in the person incurring the same; and to direct the prosecution if any has been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just.

[¶ 154] **Revised Statutes, Sec. 5293** (Comp. Sts., 1916, Sec. 10,131). The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture, is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without willful negligence or fraud, in either of the following cases:

First. If the fine, penalty, or forfeiture was imposed under authority of any revenue law, and the amount does not exceed \$1,000.

[¶ 155] **Art. 112. Power to compromise or remit.**—The Commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary, and upon the recommendation of the Attorney General, may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascertained that no violation of law was involved. No power exists, however, to compromise a tax where its existence and amount are not disputed in good faith, and the taxpayer is solvent. Where a fine, penalty, or forfeiture, not exceeding \$1,000, is incurred without willful negligence or fraud, it may be remitted by the Secretary of the Treasury; and he may remit other fines, penalties, forfeitures, and disabilities where the court has inquired into the matter and made findings.

PERSONAL LIABILITY OF EXECUTOR.

[¶ 156] **Revised Statutes, Sec. 3467** (Comp. Sts., 1916, Sec. 6373). Every executor, administrator, or assignee, or other person, who pays any debts due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due

to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

[¶ 157] Art. 113. **Extent of liability.**—The executor is personally liable for the payment of the estate tax to the amount of the full value of the assets of the estate which have at any time come into his hands. (See also Revenue Act of 1918, Sec. 407.) Where no executor or administrator has been appointed, every person in possession of any part of the gross estate is liable for the tax as an executor.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY.

[¶ 158] Sec. 1305. * * * The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 159] Sec. 1318. That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

[¶ 160] Art. 114. **Securing evidence—Taking of testimony.**—In order to ascertain the correctness of a return, or to make a return where none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such person may be required to produce any relevant book, paper or other record. This power may be exercised by any revenue agent or inspector designated for the purpose.

[¶ 161] Art. 115. **Power to compel compliance.**—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, or the production of the books, paper, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION.

[¶ 162] Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

[¶ 163] Art. 116. **Remedies for collection of tax.**—The provision of the statute quoted above applies to the estate tax law; and three remedies are thus provided for the collection of the tax:

(1) Collection by distraint.—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See R. S., Sec. 3187 et seq.; Comp. Sts., 1916, Sec. 5909 et seq.)

(2) Collection by suit to subject the property to sale.—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court. (See Sec. 408; Art. 97.)

(3) Collection by suit for personal liability.—The personal liability of the executor, of the transferee or trustee of property transferred in contemplation of death, and of the beneficiary of taxable life insurance (See Art. 101) may be enforced by any appropriate action.

[¶ 164] Art. 117. **Executor's duty to keep records.**—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep complete and detailed records of the affairs of the estate, sufficient to enable the Bureau to determine accurately the amount of the tax liability.

[¶ 165] Art. 118. **Executor's duty to render statements.**—It is also the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists.

SCOPE OF REPEAL.

[¶ 166] Sec. 1400. (a) That the following parts of Acts are hereby repealed subject to the limitations provided in subdivision (b): * * *

* * * Title II (called "Estate Tax"); * * *

(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, * * *

Provided further, That the assessment and collection of all estate taxes, and the imposition and collection of all penalties or forfeitures, which have accrued under Title II of the Revenue Act of 1916 as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917, or Title IX of the Revenue Act of 1917, shall be according to the provisions of Title IV of this Act. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

[¶ 167] Art. 119. **Scope of repeal.**—The Revenue Act of 1918 retains in force all taxes or penalties which had accrued prior to February 25, 1919. The procedure, however, with reference to the assessment and collection of all taxes, whenever they accrued, is governed by the statute from the time when it went into effect on February 25, 1919.

[¶ 168] Art. 120. **Interest under Revenue Act of 1916.**—The Revenue Act of 1916 provides that, where the tax is not paid within one year and 90 days from the date of the decedent's death, interest shall be added at the rate of ten per centum per annum from the date of death. Where the specified period had elapsed prior to February 25, 1919, this penalty has been incurred, and is not affected by the passage of the Revenue Act of 1918. Where, however, the period of one year and 90 days had not elapsed prior to February 25, 1919, the Revenue Act of 1918 extends the time of payment to one year and 180 days from the date of death. These rules operate as follows:

Example: The year and 90 days, in a given case, expired on February 15, 1919, or ten days before the effective date of the Revenue Act of 1918. In this

case interest at the rate of ten per centum per annum should be computed for the period of one year and 100 days from the date of death, or until the Revenue Act of 1918 took effect. If the tax is thereafter paid within the time prescribed by the new act (which allows an additional 80 days), no further interest accrues. If it is not paid within that period, additional interest accrues at the rate of six per cent from February 25, 1919, when the Revenue Act of 1918 took effect.

Example: On February 25, 1919, in a given case, only one year and 80 days from the date of the decedent's death had elapsed. No penalty having been incurred, the estate has 100 additional days in which to make payment, viz., the year and 180 days prescribed by the Revenue Act of 1918. If, however, the tax is not paid within this period, interest accrues at the rate of six per cent from the expiration of one year from the decedent's death, as provided by the Revenue Act of 1918 (see Art. 94).

While no interest may be added to the tax unless payment thereof has not been made within one year and 180 days after decedent's death, the tax itself is due and must be paid within one year after the decedent's death unless an extension of time for payment thereof has been granted by the Commissioner.

[¶ 169] Art. 121. **Repeal of previous regulations.**—The foregoing regulations are prescribed in pursuance of the authority conferred by the statute, and all rulings inconsistent with them are hereby revoked.

WM. M. WILLIAMS,
Commissioner of Internal Revenue.

Released for publication February 16, 1921.

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TAX

ON

TRANSPORTATION AND OTHER FACILITIES

TITLE V, SECTIONS 500, (A), (B), (C), (D) AND (E),
501, AND 502 OF THE REVENUE ACT OF 1918

Law,
Regulations 49 (Revised),
and Treasury Decisions

Indexed

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LAW

REGULATIONS 49 (REVISED) AND TREASURY DECISIONS

RELATING TO

TAX ON TRANSPORTATION AND OTHER FACILITIES

GENERAL DEFINITIONS.

[¶ 170] The revenue act of 1918, Title V, **Section 500**, provides:

That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the revenue act of 1917 * * *.

[¶ 171] **Article 1. Carrier.**—The word “carrier,” as used in Title V of the revenue act of 1918, is held to mean any person, corporation, partnership, or association who or which, for hire, furnishes any of the transportation services or facilities described or referred to in subdivisions (a), (b), (c), (d), and (e) of section 500 of the act.

[¶ 172] **Art. 2 as amended by T. D. 3096. Transportation.**—The word “transportation,” as used in Title V of this act, means the movement of persons and property by a carrier, including all services and facilities rendered, furnished, or used in connection with such movement by or on behalf of a carrier. It includes receipt, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, demurrage, towage, lighterage, trimming of cargo in vessels, wharfage, handling of property transported, feeding and watering live stock, and all other incidental services and facilities. It does not include cartage or passengers’ meals or hotel accommodations. (T. D. 3096 issued Nov. 27, 1920.)

[¶ 173] **Art. 3. Terms.**—The term “United States,” as used in Title V of this act, means only the States, Alaska, Hawaii, and the District of Columbia.

The term “person,” as used in the act and in these regulations, includes individuals, partnerships, corporations, and associations.

The term “Secretary,” as used in the act and in these regulations, means the Secretary of the Treasury.

The term “Commissioner,” as used in the act and in these regulations, means the Commissioner of Internal Revenue.

The term “collector,” as used in the act and in these regulations, means the collector of internal revenue.

CHARGES TAXABLE.

[¶ 174] **Art. 4. General rule.**—The charges in respect of which the taxes under subdivisions (a), (b), (c), (d), and (e) of section 500 must be assessed are all charges for transportation, as above defined, collected under tariffs filed or concurred in by the carrier making the charges, with a Federal or State regulating authority; provided, however, that if a carrier has not filed or concurred in such tariffs all charges collected by such carrier for transportation as above defined are taxable.

[¶ 175] **Art. 5. Tax less than one-half of 1 cent disregarded.**—In computing the amount of tax to be paid under the provisions of section 500, a fractional part of a cent shall be disregarded, unless it amounts to one-half of 1 cent or more, in which case it shall be increased to one (1) cent. No tax shall apply to any payment for freight transportation in the sum of sixteen (16) cents or less.

TRANSPORTATION OF PROPERTY BY FREIGHT.

[¶ 176] **Section 500, subdivision (a), of the act imposes—**

A tax equivalent to three per centum of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight transported from one point in the United States to another; and a like tax on the amount paid for such transportation within the United States of property transported from a point without the United States to a point within the United States.

EFFECTIVE DATE OF THE LAW.

[¶ 177] **Art. 6. Tax under revenue act of 1918.**—The tax under the revenue act of 1918 is in lieu of the tax under section 500 of the revenue act of 1917, and in the case of the transportation of property by freight the rate of taxation is the same under both acts. The provisions of the revenue act of 1917 are effective as to all taxable services or facilities furnished between midnight of October 31, 1917, and midnight of March 31, 1919; the provisions of the revenue act of 1918 do not apply to services or facilities furnished prior to midnight of March 31, 1919, but do apply to such services or facilities furnished subsequent to midnight of March 31, 1919.

[¶ 178] **Art. 7. Transportation completed prior to November 1, 1917.**—The tax under the revenue act of 1917 became effective November 1, 1917, and accordingly where transportation services are completed prior to that date no tax would be due under either of the acts, even though the transportation charges covering such services are paid at any time after November 1, 1917.

SERVICES AND FACILITIES TAXABLE.

[¶ 179] **Art. 8. Services in respect of which tax is assessed.**—The tax imposed under section 500 of the act on the amount paid for the transportation of property by freight is held to apply to each and every service and facility rendered by or on behalf of carriers in connection with transportation, as herein defined, of property by freight from one point in the United States to another, unless the property is in course of exportation.

[¶ 180] **Art. 9. Total amount of charges taxable.**—Where any taxable charge, as defined in these regulations, is collected in addition to the road haul, water haul, or road-and-water haul charge, the tax shall apply on the total amount collected by the carrier, consisting of the road haul, water haul, or road-and-water haul charge plus all taxable charges collected in addition thereto.

[¶ 181] **Art. 10. No duplication of tax.**—If any taxable charge, as defined in these regulations, be included in the road haul, water haul, or road-and-water haul charge applying to any shipment, the tax applies to and shall be collected on the total amount collected, and no separate or additional tax shall be collected on the taxable amounts included therein.

When an express company furnishes express transportation over transportation facilities of another carrier, the amounts paid by the express company to such carrier for use of the transportation facilities are not subject to tax. The tax is imposed only upon the amounts paid by the consignor or consignee of the express shipments.

[¶ 182] **Art. 11. Switching charges.**—Amounts paid for switching services rendered by or on behalf of carriers in connection with transportation are subject to the tax. However, where an express company pays a switching charge to a rail carrier for switching express cars, and the amount so paid is not passed on to the shipper or consignee, but is absorbed by the express com-

pany in its express rate, the amount so paid as a switching charge is not subject to the tax.

[¶ 183] Art. 12. **Towage charges.**—Towage, if a part of transportation, is subject to tax. If, however, towage is performed for a carrier and paid for by the carrier as a part of its operating expense, the charge is not taxable. If it is performed for a shipper direct by the towing agency, or if it is performed for account of a carrier which passes the charges therefor on to the shipper the amount paid for the service is taxable.

[¶ 184] Art. 13. **Carrier shall collect, return, and remit total taxes on all charges collected.**—Whenever one carrier collects the charge or charges for freight transportation performed in part by or on behalf of another carrier or carriers, such carrier shall collect the tax applicable to such taxable charge or charges and return and remit to the proper collector of internal revenue the total tax collected.

[¶ 185] Art. 14. **Taxable charges—In-transit privileges.**—It is the practice of some carriers in the collection of taxable charges in connection with in-transit privileges to collect the local rate to the transit point and at the time of reshipment from the in-transit point to assess the balance of the through rate, while it is the practice of other carriers to collect the local rate to the in-transit point and upon reshipment to refund such local rate, thereupon assessing the through rate from point of origin to final destination. Various other adjustments of charges are common in connection with in-transit privileges.

In the case of shipments passing through in-transit points there are two distinct and severable movements, (1) from the point of origin to the in-transit point, and (2) from the in-transit point to the point of destination. The transportation tax is assessed upon the amount actually paid for the transportation of the property and the rules governing the collection of tax in three typical cases are as follows:

First. When it is the practice of the carrier to charge the local rate on a shipment from the point of origin to the in-transit point, and then on the movement from the in-transit point to destination to charge the balance of the through rate, there would be no adjustment of the tax on the first movement and, of course, no adjustment on the second movement, because the only charges paid for the second movement are the balance of the through rate. In the case the second movement were in the course of exportation as defined in article 16, charges paid for the transportation of the second shipment would be exempt from tax, but there would be no exemption or adjustment of the tax on any amount charged for the transportation of the shipment on the first movement, that is, from the point of origin to the in-transit point;

Second. Where it is the practice of the carrier to charge the local rate from the point of origin to the in-transit point, and also to charge the local rate from the in-transit point to destination, and subsequently, on presentation of claim by the shipper, to refund the difference between the sum of the locals and through rate, the taxes paid on the two movements should be adjusted at the same time refund is made to the shipper of part of the freight charges paid, and credit in subsequent monthly returns taken therefor pursuant to the third paragraph of section 502 of the Revenue Act of 1918. In case the property in the second movement, that is, from the in-transit point, were in course of exportation, no tax on such movement would be collectible if the requirements of article 16 have been complied with. However, the tax on the amount paid for the first movement after adjustment should be collected, as the movement from the point of origin to the in-transit point is not part of the exportation movement;

Third. Where carriers charge the local rate on shipments from the point of origin to the in-transit point, and then on the movement from the in-transit point to the point of destination charge the through rate and, on claim, make a refund to the shipper. Instances of this kind should be disposed of as in the second case.

[¶ 186] Art. 15. **Taxable charges—Terminal or water service.**—Whenever a taxable charge, in connection with a terminal or water service, is paid by one carrier, acting for the consignor or consignee, to another carrier, the tax applicable shall be paid by the former carrier to the latter carrier, who shall return and remit the same as required hereunder.

EXPORTS.

[¶ 187] Art. 16. **Transportation charges for property shipped for export and actually exported are exempt from tax.**—Amounts paid for the transportation of property in course of exportation to foreign ports or places are held to be exempt from the tax imposed by section 500 of the revenue act of 1918, provided the requirements of these regulations are strictly complied with.

(a) **In course of exportation.**—Property is in course of exportation when it has been started on final voyage or delivered to a carrier for continuous transportation beyond the boundaries of the United States.

(b) **“In course of exportation” to be determined by facts.**—The test of tax exemption on shipments intended for exportation is the continuity of the movement from the point of origin in the United States to its foreign destination. Merely the intent of the shipper and the shipping documents alone may not disclose that the movement will be or has been continuous. For instance, it may be that a shipper intends that property moving in commerce ultimately will go into the export trade, but before being exported he intends to subject it to further manufacture, and although he may think the movement from the point of origin to the point of manufacture a part of the course of exportation, the facts may show it to be clearly a domestic movement only. It is also the case with some shipments that the inland movement of the property from the point of manufacture to the point of export may be under a domestic bill of lading or shipping receipt, nevertheless if the property is actually exported and the movement a continuous one, the shipping papers may not provide accurate proof as to the true character of the shipment.

(c) **The movement must be continuous.**—The movement must be continuous—there must be no “break” in the movement—the property must not “come to rest.” In case there is a break or a coming to rest of the property at any point in transit the first movement is a complete domestic movement and amounts paid for the transportation on the first movement are taxable and are not subject to exemption, adjustment or refund other than as provided in article 14 hereof.

If the property at the point where the break occurred or where it had come to rest is subsequently started on final voyage or delivered to a carrier for continuous shipment to a foreign place and no break afterwards occurs and the property does not again come to rest, the export movement is the one from the last point where the shipment was broken or the property had come to rest and amounts paid for its transportation between the point where the last break occurred or it had come to rest and the point of export are exempt from tax if the requirements of these regulations have been strictly complied with.

A “break” occurs, or “property comes to rest,” when a shipment moving in commerce, although it may consist of articles or products manufactured or produced for export and which the shipper, producer or manufacturer intended

for export, reaches a place in the United States where at the instance of the shipper or his agent it is stopped for a business purpose, such as private sale, storage, grading, sacking, reshipment, or manufacture, and not in necessary delay or accommodation to the means of transportation.

As an instance of a break in transportation, grain consigned to receivers at or near ports where the receivers upon receipt of the grain dry it, sort it, clean it, grade it by mixing with other grains, and accumulate it in large quantities for the purpose of selling it subsequently to exporters, is not in course of exportation and has come to rest. It has been held for a business purpose. The movement through the port to export will not have been continuous, and the grain can not be said to be in course of exportation. The very acts performed by the receivers describe a business, and the exporter purchasing grain from such receivers and the receivers are not entitled to exemption from the transportation tax.

Shipments through the United States from Canada or Mexico under customs transportation bond are deemed to be in course of exportation unless and until they are delivered to a warehouse for storage and subsequent disposition to a person other than the consignee shown in the original transportation bond, in which case the carrier should collect the tax on amounts paid for its transportation.

Grading, as herein used, has reference to the mixing of different shipments of grain for the purpose of obtaining a new grade, and it does not have reference to inspection by Federal licensees or officials of the Department of Agriculture for ascertaining its character pursuant to the Grain Standards Act.

(d) **Proof of character of shipment.**—Persons shipping property into export are required to retain in their files, in accessible condition, proof of the export character of the shipment. To satisfy the commissioner as to the export character of the shipment the person claiming exemption from tax should have in his files at the time the shipment starts from the point of origin a contract, order, proposal of purchase, or other written evidence of intention to export the property (such other written evidence of intention to export to be one year's estimated requirements determined by averaging the quantity exported during the three preceding years as shown by the books of the person claiming exemption or to be based on a firm order) for delivery at a place beyond the boundaries of the United States. In cases where the person claiming exemption is unable to make a fair estimate of his foreign requirements by averaging the quantity exported during the three preceding years, he may determine his foreign requirements by averaging the quantity exported during the three years immediately preceding the year 1914 as shown by his records. If the person claiming exemption has been in business only two years, the average requirements for the two years will be acceptable. If the shipper has only recently commenced business proof of his intention to export property must be based, of course, on particular contracts, orders, firm orders, or other satisfactory evidence. Satisfactory proof that the movement has been continuous may be made by through bills of lading or through live-stock contracts in the case of shipments to Canada or Mexico, or through export bills of lading on rail-to-ocean shipments, or when the movement has not been under through shipping papers by means of the temporary exemption certificate and the certificate of exportation as hereafter provided. See articles 21 and 22.

[¶ 188] **Art. 17. Shipments under different circumstances to be governed by different rules.**—For the purposes of these regulations shipments are of two classes—first, those made against particular orders or contracts; and, second, those not so made, including, for example, those made against foreign requirements certificates and which pass through pools or similar arrange-

ments. Those shipments which pass through pools or similar arrangements into export are to be governed by rules which will be set forth hereafter.

Shipments in the first class—that is, those shipments made against particular contracts or orders for foreign delivery and which do not pass through pools or similar arrangements—may be classified for the purposes of these regulations as (1) all-rail and rail-and-lake shipments, and (2) rail-and-ocean shipments. These classes may be further divided into: (a) those all-rail and rail-and-lake shipments made under a through bill of lading and the rail-and-ocean shipments made under a through export bill of lading, and (b) all-rail and rail-and-lake shipments to Canada and Mexico and rail-and-ocean shipments which are not under through bills of lading or through export bills of lading.

SHIPMENTS AGAINST PARTICULAR CONTRACTS OR ORDERS.

Kind of Shipments Which Need Not Be Covered by Certificates.

[¶ 189] Art. 18. **Shipments to Canada or Mexico under through bills of lading or under through live-stock contracts which need not be covered by certificates.**—Charges on freight transported from a point within the United States to a point in Canada or Mexico under a through bill of lading or a through live-stock contract are exempt from the transportation tax and temporary exemption certificates, and certificates of exportation covering such shipments will not be required when the shipments are made against particular contracts or orders and not against foreign requirements certificates and which do not pass through pools or similar arrangements, provided the shipper in the United States retains in his files proof of the export character of the shipment, and provided the property is delivered to a foreign carrier for delivery to a place in Canada or Mexico without stoppage in transit in the United States for a business purpose; and, further provided, the shipment is not diverted or reconsigned while in transit to a point within the United States. In case of diversion or reconsignment to a point within the United States the tax will apply and should be collected by the carrier. A through bill of lading or through live-stock contract for the purposes of this article is one in which the property is consigned to a consignee and a destination in Canada or Mexico. A bill of lading or live-stock contract in which property is consigned to a consignee at a border point or port of exportation, even though it shows the name of a consignee and an ultimate destination in Canada or Mexico, is not a through bill of lading or through live-stock contract under these regulations, and such shipments in order to be exempt from the transportation tax, must be covered by the temporary exemption certificate and the certificate of exportation.

In the case of freight originating in the United States and consigned to a destination in the United States which is subsequently diverted or reconsigned to a point in Canada or Mexico, the carrier so diverting or reconsigning it shall collect the transportation tax on the charges from such point of origin in the United States to the point at which the diversion to Canada or Mexico occurred at the time such diversion or reconsignment is made. From the last point of diversion in the United States charges for the transportation of property to Canada or Mexico will be exempt from the tax without the filing of a temporary exemption certificate or certificate of exportation, provided the shipper retains in his files proof of the export character of the shipment from the point at which such diversion occurred.

[¶ 190] Art. 19. **Rail-and-ocean shipments which need not be covered by certificates.**—Charges for the transportation of freight from a point within the United States, consigned to a point in a foreign country, when transported under a through export bill of lading in which the foreign consignee and the

foreign destination are specified, are exempt from the transportation tax, and temporary exemption certificate and certificate of exportation to cover such shipment will not be required when the shipment is made against a particular contract or order and not against a foreign requirements certificate, and when the shipment does not pass through a pool or similar arrangement, provided the shipper in the United States retains in his files proof of the export character of the shipment, and provided the property is delivered to a carrier at the point of export for delivery to a place beyond the boundaries of the United States without stoppage in transit in the United States for a business purpose, and further provided the shipment while in transit is not diverted or reconsigned to a point within the United States. In case of diversion or reconsignment to a point within the United States the tax will apply on the charges for such transportation. In case the through export bill of lading is not issued by the agent of the carrier at the point of origin, but the person claiming exemption intends to obtain a through export bill of lading on such shipment, the original shipping papers should be stamped in red ink across the face thereof "To be exchanged for through export bill of lading." The original shipping papers in each instance, however, should show the foreign consignee and the foreign destination.

Shipments Which Must Be Covered by Certificates.

[§ 191] Art. 20. All shipments against particular contracts or orders for export, whether to Canada or Mexico or to Atlantic or Pacific coast points, which are not made under through bills of lading in the case of Canadian or Mexican shipments, or through export bills of lading in the case of rail-and-ocean shipments, must be covered by temporary exemption certificates and proof of the exportation of the shipments must be made by filing certificates of exportation.

EXPORT CERTIFICATES.

Form.

[§ 192] Art. 21 (as amended by T. D. 2978 and T. D. 3005). **Temporary exemption certificate.**—The temporary exemption certificate shall contain the following information: (1) The name of the shipper, (2) commodity, (3) point of export, (4) number, date or other identifying feature of foreign requirements certificate, contract, order, proposal of purchase, or other written evidence of intention to export (as heretofore defined) pursuant to which the shipment is made, (5) car number, initial and weight or other measure of the commodity to be exported, (6) freight charges, and (7) foreign destination in case of isolated or single shipments where the foreign requirements certificate is not used.

This certificate is to bear date prior to or of the day the shipment moves from the point of origin and conform in that respect to the railroad's shipping document. (But for shipments into pools, see article 27.)

In case a shipper finds the form of the temporary exemption certificate as herein provided not adapted to his purposes he may prepare one suitable for his particular business and furnish it at his own expense, provided the form used by him contain all the essential facts called for in this article (and be of the size provided) arranged in such order as to deviate as little as possible from the form provided and yet be adapted to the needs of the particular shipper. Where shipments are not made against a foreign requirements certificate, and not made through pools or similar arrangements, but against particular contracts or orders, the temporary exemption certificate need not be sworn to.

Where all the information required in a temporary exemption certificate is filled in except number and date of waybills, weight, freight charges, or amount of tax, the carrier is authorized to accept it, provided the carrier completes the

temporary exemption certificate when the further information therein required is available, and provided the property constituting the shipment is described in a manner adequate to identify it.

[¶ 193] Art. 22. **Certificate of exportation.**—The certificate of exportation shall contain a statement signed by the shipper or other authorized person, as the agent in charge of the pool, showing (1) the kind of property, (2) car number, initial, and weight or other measure of property making up the cargo, (3) the amount of the freight charges to point of export, (4) the number of the temporary exemption certificate or certificates of the shipper, (5) reference to the contract, order, proposal of purchase, or other written evidence of intention to export upon which the shipment is applied, (6) place of original shipment, (7) foreign destination, and (8) name of export carrier.

The purpose of the certificate of exportation is to prove that the property described in the temporary exemption certificate has actually been exported. If the form herein prescribed does not meet the needs of a shipper the same limited deviation hereinbefore authorized with reference to the temporary exemption certificate is authorized with reference to the certificate of exportation.

That part of the certificate of exportation required to be executed by the agent of the ocean carrier, captain of the vessel, or a customs official may be executed by the person entitled to exemption, provided the person so entitled to exemption has in his possession a memorandum from the agent of the export carrier, the captain of the vessel, customs official, or the foreign consignee showing that the goods have been exported, or has in his possession the ocean bill of lading, shipper's export declaration, or other evidence sufficient to establish the fact that the property has actually passed beyond the boundaries of the United States, and provided such evidence is retained in such manner as to be readily available for the inspection of Internal Revenue agents.

METHOD OF FILING TEMPORARY EXEMPTION CERTIFICATES AND CERTIFICATES OF EXPORTATION.

[¶ 194] Art. 23. **The person entitled to exemption is the one who should file the certificates.**—The person entitled to exemption from the tax on transportation charges in the case of export shipments is the person who pays the freight charges. And such person to be entitled to claim exemption must have on hand before he claims such exemption and before shipping property on which he intends to claim exemption a particular contract or order for the delivery of property in a foreign country. Orders received from or through export brokers or other persons in the United States who hold bona fide contracts or orders for the delivery of property in a foreign country may be shipped under temporary exemption certificates provided such export broker has informed the shipper of such contract in a manner sufficient to identify it. The person who pays the freight charges is the one designated in the certificates as "shipper," and he is the one to file the temporary exemption certificate and the certificate of exportation.

(a) **Shipments on which freight is prepaid.**—In the case of prepaid charges on shipments in course of exportation the temporary exemption certificate shall be filed with the agent of the carrier who receives payment of the freight charges and it is his authority for not collecting the tax.

This temporary exemption certificate which has been filed with the agent of the carrier at the time such shipment, upon which the freight is prepaid originates, does not obtain permanent exemption from the tax on amounts paid for the transportation of such shipment and notwithstanding the temporary exemption certificate the amounts so paid are subject to tax, unless proof of

exportation is made by filing the certificate of exportation in the form heretofore prescribed. The certificate of exportation may be executed by the person who filed the temporary exemption certificate upon receipt of advices that the shipment has been exported and the exemption from tax on such shipment thereby becomes permanent. The certificate of exportation must be filed with the agent of the carrier within 30 days after such shipment has been exported, and unless the certificate of exportation has been filed within the 30-day period after exportation the carrier shall collect the tax unless the shipper produces proof by affidavit that causes beyond his control have prevented receipt of information as to the exportation of the shipment.

(b) **Shipments on which freight is collect.**—In the case of shipments in course of exportation where the freight charges are to be collected at the port of exportation, the shipper, who is the person at the port who pays the freight charges, shall cause to be delivered by his agent, the consignor, or other authorized person, the temporary exemption certificate to the billing agent of the carrier at the point of origin. The agent at the originating point shall then forward such temporary exemption certificate to the agent of the carrier who receives payment of the freight charges at the point of destination and it is his authority for not collecting the tax. To secure final exemption the certificate of exportation must then be filed with the agent of the carrier who has in his possession the temporary exemption certificate which had been previously filed to cover the shipment of the property to be exported.

(c) **Shipments to Canada or Mexico not under through bills of lading or through live-stock contracts on which the freight charges are collect.**—In the case of collect shipments to Canada or Mexico, the temporary exemption certificate and the certificate of exportation shall be filed by the consignor with the carrier at the originating point. The temporary exemption certificate and the certificate of exportation are to be filed in the form, manner, and time as heretofore provided.

POOLS OR SIMILAR ARRANGEMENTS.

[¶ 195] **Art. 24. Shipments in course of exportation which pass through pools or similar arrangements.**—In certain industries it is necessary that property to be exported pass through pools or similar arrangements. Pools or similar arrangements include physical pools, such as grain elevators used to transfer grain from cars to vessels, but not the assembling of grain for the purpose of filling orders acquired after the grain has arrived at the elevator; oil tanks, which are used to conduct the oil or gasoline from tank cars to vessels; pools, such as are conducted by the Tidewater Coal Exchange and the Lake Exchanges, where all the railroads running into a given harbor and all the piers in such harbor are a part of the pool from which the authorities in charge of the pool draw property without reference to its prior ownership or points of origin, or where the lines of a given railroad constitute a pool; and pools where private shippers have a number of tracks, each one of which is used for a certain grade of property, regardless of the point of origin of the shipments or the contracts on which they are to apply. These instances are cited to inform the taxpayers as to the nature of pools or similar arrangements referred to herein.

In the case of a shipment of property into a pool or similar arrangement, a like quantity and grade of which is to be shipped from the pool for export, the export character of the shipment is determined by the following facts: (a) That the property in question was shipped from an interior point for the express purpose of entering the pool for export, pursuant to a foreign contract, order, proposal of purchase, or other written evidence of intention to export (as heretofore defined) the property to a place beyond the boundaries of the United States; and (b) that the property shipped from the pool for

export in continuation of the movement described under (a) is of an equivalent tonnage of the same grade or kind as that shipped into the pool for export, and answers the requirements of the foreign requirements certificate and of the foreign contract in pursuance of which the two movements (a) and (b) were made.

[¶ 196] Art. 25. **Proof of export character of shipments through pools or similar arrangements.**—The export character of shipments through pools or similar arrangements will be deemed to have been established if the conditions prescribed under this title are carefully and fully complied with. Because of the peculiar nature of shipments through pools or similar arrangements and the difficulty in ascertaining their export character, two conditions precedent to temporary exemption are, first, that the person claiming exemption have orders, contracts, proposals of purchase, or other written evidence of intention to export, and second, that such person has executed and filed with the collector of internal revenue for the district in which the person paying the freight charges has his principal office or place of business, a foreign requirements certificate.

[¶ 197] Art. 26. **Foreign requirements certificate.**—The foreign requirements certificate (Form 800), shall show (1) contracts, orders, proposals of purchase, or other written evidence of intention to export (such other written evidence of intention to export to be one year's estimated requirements determined by averaging the three preceding years as shown by the books of the shipper or to be based on a firm order), numbered consecutively, (2) name of shipper, (3) place or places of foreign destination, (4) commodity, (5) point or points of export, and (6) the number or other identifying feature of each contract, order, proposal of purchase, or other evidence of intention to export. This foreign requirements certificate may be amended or it may be superseded when necessary by a supplemental certificate of foreign requirements in case the shipper subsequently enters into other contracts requiring the exportation of a commodity.

The foreign requirements certificate filed with the collector should be retained in the office files of the collector for the use of internal-revenue officers in checking said certificate against temporary exemption certificates and certificates of exportation when making their inspections of the records of carriers and shippers.

[¶ 198] Art. 27. **Use of certificates to gain exemption.**—The final exemption from the tax on freight charges paid on property shipped into a pool or similar arrangement, a like quantity and grade of which will be shipped into export, will only be granted in case that property has been shipped from an interior point for the express purpose of entering the pool for export (in proof of which the shipper in such case must have filed the foreign requirements certificate, and shipments made pursuant thereto must have been covered by temporary exemption certificates), and an equivalent amount of property must have been exported to a destination stated in the certificate of exportation, as herein provided, which certificate of exportation must also refer to the particular foreign contract, order, proposal of purchase, or other written evidence of intention to export pursuant to which the export shipment has been made.

In case of property shipped from the pool or other similar arrangement into export, no exemption from the tax shall be allowed for any amount of property so exported in excess of the amount of the same grade or kind of property in the pool at the time the export shipment was made and for which a temporary exemption certificate or certificates had been filed.

Temporary exemption certificates covering shipments which pass through pools or similar arrangements must be sworn to. Certificates of exportation

must be executed and filed within 30 days after the shipments have arrived at the port of exportation or an affidavit must be filed by the person paying the freight charges that such shipments is delayed due to lack of transportation accommodations.

In the case of property shipped through pools or similar arrangements, where the weight of the property shipped and the freight charges thereon are not determined until after the shipment has reached its domestic destination or has been loaded aboard ship, the person paying the transportation charges may file the temporary exemption certificate complying with all its requirements except weight, freight charges, and the tax, provided it shows an estimated amount of the total tonnage contained in the lot of cars shown and the carriers are authorized to accept it in such form.

Carriers in some cases do not provide for the waybilling of cars at the point of origin, but assemble the cars from numerous places to make up trains at a billing point where the waybills are prepared and the cars billed as of their points of origin; where these circumstances obtain and on shipments where the freight is collect the person paying the freight charges may prepare the temporary exemption certificate at his office and from there mail it to the agent of the carrier who collects the amounts charged for the transportation of such property or the designated agent of the carrier as hereafter stated, provided the temporary exemption certificates bear even date with that of the waybills, or on the collect shipments show the date of the contract or order against which the shipments are made, and the date of such contract must be prior to or of the date the shipment originates, and, provided further, that the temporary exemption certificate is received by the agent of the carrier before the shipment reaches the pool.

When property has been shipped into pools under temporary exemption certificates and an equivalent tonnage goes into export pursuant to the requirements of these regulations, the certificate of exportation in proof of the exportation of the quantities covered by the temporary exemption certificate which referred to the foreign requirements certificate, may state, in lieu of car number and initial, the total number of tons exported, but such tonnage so exported must be of the same grade or kind as that shipped into the pool under the temporary exemption certificates; that is, if the property shipped from the pool answers the requirements of the contract against which it is applied and property was shipped into the pool for application on such foreign requirements, the demands of these regulations have been complied with.

Carriers at some of the seaports in agreement with shippers have designated "exchanges," herein called "pools," to direct exporting operations and with full authority to control the accounting practice in the pool; where there are such pools the shippers or transshippers may file their temporary exemption certificates with the agent of the pool, and such agent of the pool may execute the shipper's part of the certificate of exportation on behalf of such shipper. The agent of the pool may then certify to the carrier, if all the requirements of these regulations have been complied with, at the same time he informs the carrier he has a vessel for a cargo, that freight charges on the property going into such cargo are tax exempt, and such certification is authority for the carrier not to collect the tax.

GENERAL PROVISIONS REGARDING EXPORTS.

[¶ 199] Art. 28. **Contracts to be subject to inspection.**—At all times the shipper must keep on hand subject to the inspection of internal-revenue officers, the original contracts, orders, proposals of purchase, or other evidences of intention to export as herein defined, against which temporary exemption certificates have been filed and upon which the verified foreign requirements

certificate on file is based. Such original contracts, orders, proposals of purchase, or other evidences of intention to export must in each case be in writing and bear the same number as that given in the foreign requirements certificate, when such certificate has been used. In no case will an exemption exceed in amount the sum which would have been due except for the export shipments made pursuant to the contract, order, proposal of purchase, or other evidence of intention to export which is retained of record.

[¶ 200] Art. 29. **T. D.'s 2889, 2917, and 2928 superseded by these regulations.**—The provisions of these regulations supersede the rulings contained in T. D.'s 2889, 2917, and 2928.

[¶ 201] Art. 30. **Shipments originating on and after October 10, 1919, where no certificates are filed.**—On and after October 10, 1919, in all cases where the movement of the property has been continuous from the point of origin to the point of exportation and in due course actually exported, and no stoppage in transit occurred except in necessary delay or accommodation to the means of transportation, and such shipments have not been covered with the necessary temporary exemption certificates, the carrier shall collect the tax and the party paying the freight charges may file a claim with the Commissioner of Internal Revenue on Form 46 for refund of the tax collected.

[¶ 202] Art. 31. **Claims for refund.**—The procedure in the presentation of claims for refund of tax paid on bona fide export shipments is prescribed in Part VIII of these regulations. (Paragraphs 302-305.)

[¶ 203] Art. 32. **Instructions to collectors and carriers.**—The revenue act of 1918 requires the carriers to collect the transportation tax. When they fail to collect the tax and make a return thereof on amounts charged for the transportation of property, the carrier is liable for the amount of the tax and a penalty of 50 per cent in addition, and collectors have no authority to authorize carriers to release property which the carriers are holding for unpaid taxes. Carriers should ascertain as soon as circumstances will permit amounts due for taxes on freight charges which have been improperly exempted. The carrier should then bill the shipper for the amount, and in case the shipper fails to pay it within 10 days the carrier should certify the amount to the collector of his district, the collector in turn should certify the amount to the Commissioner of Internal Revenue, who will declare the taxes due and payable by special assessment, and in case the taxes are not paid within 10 days thereafter distraint proceedings will be taken according to law to collect the tax so found due and payable.

[¶ 204] Art. 33. **Accounts by carrier.**—Carriers shall keep on file for ready reference temporary exemption certificates and the certificates of exportation. Should the certificate of exportation not be filed for shipments temporarily exempted within 30 days after such shipments are received at port of exportation in the case of shipments through pools or similar arrangements, and 30 days after exportation in the case of shipments against particular contracts or orders, the carrier shall collect the tax, unless the shipper shall submit proof by affidavit that the delay was occasioned through no fault on his part, but solely because of the lack of transportation facilities due to causes beyond his control: Provided, That in the case of shipments through pools where there are continuous shipments being received into the pool and shipments into export continuously being made, carriers or their designated agents will be required only to keep accounts of the tonnage received under temporary exemption certificates and shipments made into export under certificates of exportation, and they may carry forward at the end of the month to the next month any balance of shipments made under temporary exemption certificates which have not actually been exported (in equivalent tonnage), the tax

to be collected on charges paid for the transportation of such balance if the shipper or transshipper has made no shipments under temporary exemption certificates into the pool and no shipments covered by certificates of exportation from the pool within a 30-day period. The shipper or transshipper, of course, may file an affidavit that the movement of the balance of the property is delayed at the point of export by reason of the lack of transportation due to no fault of the shipper.

[¶ 205] Art. 34. **Bunker coal or oil.**—Amounts paid for the transportation of bunker coal or oil in no case are exempt from tax.

[¶ 206] Art. 35. **Shipments to Porto Rico, Philippine Islands, Virgin Islands, and the Canal Zone.**—Shipments to Porto Rico, the Philippine Islands, the Virgin Islands, and the Canal Zone are not export shipments. But the rail transportation from an interior point of the United States to a port for transshipment to Porto Rico, the Philippine Islands, and the Virgin Islands is exempt from tax by reason of specific acts of Congress. Property will be deemed to be in the course of transportation to these localities only when shipped under the conditions described in article 16. Transportation of shipments destined to the Canal Zone is not exempt.

PROPERTY IMPORTED; PROPERTY PASSING THROUGH THE UNITED STATES.

[¶ 207] Art. 36. **Property imported.**—In the case of property, whether moving on a through or foreign bill of lading or otherwise, imported into the United States, the tax imposed under section 500 of the act applies to the transportation charges which accrue thereon from point or place of entry to destination within the United States.

The tax due under the preceding paragraph shall be collected as and when the transportation charges thereon are collected if such charges be collected within the United States. If such charges be prepaid outside the United States and not paid at point or place of entry, such tax shall be collected upon delivery of the shipment.

[¶ 208] Art. 37. **Import shipments by rail from adjacent foreign countries.**—When import shipments from adjacent foreign countries move by rail on through rates and there are no established divisions, the charges shall be prorated on a mileage basis and the transportation tax shall be paid and collected upon that proportion of the amount paid which the mileage within the United States bears to the mileage of the shipment transported. When there are established divisions, the transportation tax shall be paid and collected upon the division accruing for the transportation from the border point, if the divisions are based on the border, to destination within the United States. If divisions are not based on the border, then the tax shall be paid and collected upon the division from the basing point nearest the border to destination, plus or minus an amount computed on the mileage from such basing point to border.

[¶ 209] Art. 38. **Import shipments by water from Canada.**—Where property is shipped into the United States from Canadian points by water the tax shall be collected upon the proportion of the amount paid for transportation which the mileage within waters of the United States bears to the total mileage traveled. The basis on which this proportion is to be determined shall be the average mileage traveled in United States waters between given points under ordinary and normal conditions, and shall not be affected by variations in the mileage actually traveled on account of stress of weather or other conditions.

[¶ 210] Art. 39. **Charges incurred in the United States on import shipments.**—Where the payment of a portion of a through charge for the transportation of property from an origin outside of the United States to a destination in a border city is made to a domestic or foreign carrier for services ren-

dered in the United States, the amount paid for such services is subject to the tax. For instance, in order to place a shipment which had arrived from Canada at a given point in the border city, switching services were performed. The amount paid for such switching services would be taxable whether included in the through charge or billed separately.

[¶ 211] **Art. 40. Property passing through the United States.**—In the case of property passing through the United States from one foreign port or place to another the tax does not apply. If, however, property, while so passing through the United States, be reconsigned to a destination within the United States, the tax applies to the transportation charges thereon from the point or place of entry to such destination within the United States.

DOMESTIC SHIPMENT PASSING THROUGH A FOREIGN COUNTRY EN ROUTE.

[¶ 212] **Art. 41. Charges on such property taxable.**—If a shipment having both origin and destination within the United States passes out of the United States on its journey, the gross transportation charges from point of origin to final destination are nevertheless subject to the tax.

COMMODITIES TRANSPORTED WITHOUT COLLECTION OF A CHARGE.

[¶ 213] **Section 501, subdivision (c), of the act provides:**

The taxes imposed by section 500 shall apply to all services or facilities specified in such section when rendered for hire, whether or not the agency rendering them is a common carrier. In case a carrier (other than a pipe line) principally engaged in rendering transportation services or facilities for hire does not, because of its ownership of the goods transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such goods if the carrier received payment for such transportation; such tax, if it can not be computed from actual rates or tariffs of the carrier, to be computed on the basis of the rates or tariffs of other carriers for like services as determined by the Commissioner. In the case of any carrier (other than a pipe line) the principal business of which is to transport goods belonging to it on its own account and which only incidentally renders services for hire, the tax shall apply to such services or facilities only as are actually rendered by it for hire.

[¶ 214] **Art. 42. Carrier.**—Where a carrier (other than a pipe line) is engaged principally in the business of transporting goods belonging to it on its own account and only incidentally renders services for hire, the tax will apply only to such services as are actually rendered for hire. However, in case a carrier (other than a pipe line) is principally engaged in rendering transportation services or facilities for hire and does not, because of its ownership of the goods transported, or for any other reasons, receive the amount which as a carrier it would otherwise receive, such carriers will pay the tax that would be imposed upon the transportation if the carrier received payment therefor.

The tax applies to the transportation by a carrier of property belonging to or for the personal use of any of its officers, agents, or employees, even though such property be transported free of charge.

[¶ 215] **Art. 43. Basis of computation of tax.**—In the cases falling within the above-quoted provision of section 501, the basis of the computation of the tax shall be upon the legal rates or tariffs of the carrier and, in the absence thereof, the actual rates or tariffs of other carriers for like service. If the basis of the tax can not be readily determined in the manner stated, the facts should be forthwith reported by the carrier to the Commissioner of Internal Revenue for determination by him of the basis of computation.

TRANSPORTATION OF COMMODITIES FOR USE OF CARRIER AS A CARRIER.

[¶ 216] **Section 501, subdivision (c), of the act provides:**

Nothing in this or the preceding section shall be construed as imposing a tax (1) upon the transportation of any commodity which is necessary for the use of the carrier

in the conduct of its business as such, and is intended to be so used or has been so used, or (2) upon the transportation of company materials transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.

[¶ 217] Art. 44. **Effect of foregoing provision.**—The sole effect of this provision of the act is to exempt from the tax all transportation charges made by or which would accrue to a carrier, were such charges made by that carrier, on all materials, supplies, or other commodities transported by such carrier which are necessary for its use in the conduct of its business as such carrier, and intended to be or having been so used.

[¶ 218] Art. 45. **Stock of one corporation owned by another.**—The fact that all or part of the capital stock of a corporation is owned by another corporation does not affect the application of sections 500 and 501 of the act to each corporation as an entity.

[¶ 219] Art. 46. **Application of tax.**—The tax applies to all transportation charges made by, or which would accrue to, a carrier, were such charges made by it, on all materials, supplies, or other commodities transported by that carrier for another carrier, even though such commodities be necessary for the use of such other carrier in the conduct of such other carrier's business as such, subject, however, to the following qualifications:

(a) As provided by section 501 of the act, the tax is not imposed "upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system." The term "a railroad system" is held to mean two or more railroads and such other carriers as may be operated in conjunction therewith, all such railroads and other carriers being under one general operating management and even though each such railroad or other carrier maintain its corporate identity.

(b) If the facilities of an express company operating on the line of a railroad company be necessary for the use of such railroad company in the conduct of the railroad company's business as such, and if the railroad company, under contract, transports commodities necessary to maintain or operate such facilities, such commodities being intended to be or having been so used, and the railroad company makes no charge for such transportation, the charges which, but for such arrangement, would have accrued on such transportation are exempt from the tax.

(c) If a telegraph or telephone line or lines along the line of a railroad company be necessary for the use of such railroad company in the conduct of the railroad company's business as such, and if the railroad company, under contract, transports commodities necessary to maintain or operate such telegraph or telephone line or lines along the line of such railroad company, such commodities being intended to be or having been so used, and the railroad company makes no charge for such transportation, the charges which but for such arrangement would have accrued on such transportation are exempt from the tax.

(d) If a terminal or yard for the use of one or more railroads, jointly or severally, be operated under the management of a terminal or switching company, or of such railroad or railroads, and the user cost therefor to them be based on either gross or net costs of operation, the commodities necessary in the operations of such terminal or yard shall, as respects the provisions of sections 500 and 501, be considered as commodities necessary for the use of such carriers thereof; and the tax does not apply to the transportation charges for such commodities if transported over the lines of such carriers. If, however, a terminal or yard be operated under its own management for profit, or if a fixed rental be charged users or tenants for services rendered by the terminal or

switching company, the tax applies to the transportation charges made by tenants or users on such commodities.

(e) The transportation tax on freight charges accruing on shipments of company material carried by one railroad for another should be collected by the railroad collecting the freight charges from the railroad owning the material.

[¶ 220] Art. 47. **Federal control.**—All the carriers operated by the Government constitute one system within the meaning of this exemption. The transportation of company material transported by one carrier under Federal control for another carrier also under Federal control is not taxable. However, if the charges for transporting the material are not paid by the carrier for which the service is rendered, such charges are taxable. For example, if material is sold by a manufacturer to a carrier the shipment of such material over the lines of another carrier would be subject to the transportation tax unless the carrier purchasing the material specifically agrees to bear the transportation charges on such shipments.

[¶ 221] Art. 48. **Circus trains.**—Where a lump-sum charge is made for the transportation of a circus train, which carries both property and persons, the 3 per cent tax applies to such charge. If, however, advance passenger transportation is included in such lump-sum charge, the 8 per cent tax applies to such portion of the charge as represents the charge for advance passenger transportation, and the 3 per cent tax applies to the balance of the lump-sum charge.

[¶ 222] Art. 49. **Milk, newspapers, and other commodities.**—The amounts paid for transportation, other than by express, of milk, newspapers, and other commodities are subject to the tax of 3 per cent.

Whenever two or more tickets for the transportation of commodities are sold in book form or in bulk, the tax applies to the aggregate amount paid for the tickets so purchased.

[¶ 223] Art. 50. **State inspection charges.**—State inspection charges collected by a carrier as an agent of the State are not amounts paid for transportation services and are not subject to tax.

[¶ 224] Art. 51. **Storage and demurrage charges.**—Amounts paid for storage if a part of transportation are subject to tax. Storage after delivery to owner is not a part of transportation. Storage by or in behalf of a carrier furnished to a shipper on receipt of his goods for shipment, or storage by or in behalf of a carrier at destination before delivery to owner, whether in outside warehouse or otherwise, is a part of transportation and subject to tax. However, where the consignee has been notified of the arrival of a shipment at destination and fails to remove it within a reasonable time after such notification, the transportation is considered as having ended after such reasonable time, and charges for storage thereafter are not subject to tax.

[¶ 225] **Original Article 51 restored after amendment.**—It was held in T. D. 3022 that demurrage was a penalty imposed by the railroad for detention of cars beyond a reasonable time, so not a transportation item and not subject to tax. This ruling was subsequently reversed by T. D. 3096, making the article as originally written now effective.

[¶ 226] Art. 52. **Blocking and staking charges.**—Blocking and staking property in cars if furnished by or in behalf of a carrier is part of transportation, and charges for said services paid by either the consignor or consignee of the property are subject to the tax.

[¶ 227] Art. 53. **Property sold.**—If a consignment of property transported, including baggage, be refused or unclaimed and sold at public or pri-

rate sale under Federal or State statutes or regulations, or, in the absence thereof, under the rules and regulations of a carrier, or if a carload of property or a perishable consignment be sold under emergency conditions for the benefit of whom it may concern, then and in any such case the net amount realized therefrom shall be considered the transportation charge applicable to such consignment, and the 3 per cent tax shall apply to such amount and be paid by the purchaser: Provided, however, That if such amount be in excess of the actual transportation charges accruing on such consignment, the tax shall not apply to such excess.

[¶ 228] Art. 54. **Chartered boats and motor trucks.**—When boats or motor trucks are chartered and the person chartering the boats or trucks transports therein his own property, the amount paid for chartering such boats or trucks is not a transportation charge subject to the tax. However, payments for the rental or charter of motor trucks or boats, operated by the employees of the owners of said motor trucks or boats, are subject to the transportation tax.

[¶ 229] Art. 55. **Combined freight and express services or facilities.**—When property is transported between two points, partly by freight and partly by express, the 3 per cent tax applies on the amount paid for the freight movement, and the tax of 1 cent for each 20 cents or fraction thereof applies on the amount paid for the express movement. The carrier collecting the total transportation charges shall collect, report, and pay the total tax due.

[¶ 230] Art. 56. **Transportation by mechanical motor power when in competition with carriers by rail or water of property by freight.**—Transportation of property by freight by mechanical motor power is taxable only when in competition with carriers by rail or water, but mechanical motor transportation by rail or water is subject to the tax without regard to competition with other carriers. For example, transportation of freight by automobile trucks is taxable only when in competition with carriers by rail or water, but transportation by motor-driven boats or motor-propelled rail facilities are taxable whether competition exists or not.

When property is transported between two points by mechanical motor power and rail or water transportation is furnished between the same points, competition is deemed to exist in the absence of unusual conditions.

Transportation of household goods by mechanical motor power is transportation of property by freight. If such transportation is conducted in competition with transportation by rail or water, it is subject to the transportation tax.

When the amounts charged for transportation by automobile vans include services of packing and unpacking furniture, carrying goods up and down stairs, moving pianos, safes, etc., out of windows, the tax will apply to the entire charge made for the service unless the amounts can be apportioned between the actual transportation charges and the other charges.

TRANSPORTATION OF PACKAGES, PARCELS, OR SHIPMENTS BY EXPRESS.

[¶ 231] **Section 500**, subdivision (b) of the act, imposes:

A tax of 1 cent for each 20 cents or fraction thereof of the amount paid to any person for the transportation on or after such date, by rail or water or by any form of mechanical motor power when in competition with express by rail or water, of any package, parcel, or shipment, by express, transported from one point in the United States to another; and a like tax on the amount paid for such transportation within the United States of property transported from point without the United States to a point within the United States.

[¶ 232] Art. 57. **Application of tax.**—The provisions of Parts I and II (paragraphs 170-175 and 176-230) hereof, in so far as they are applicable to

transportation of packages, parcels, or shipments by express from one point in the United States to another, are held to control in connection with the application of the express tax.

If the facilities of a railroad company on the line of which an express company operates be necessary for the use of such express company in the conduct of the express company's business as such, and if the express company, under contract, transports commodities necessary to maintain or operate such facilities, such commodities being intended to be or having been so used, and the express company makes no charge for such transportation the charges which but for such arrangement would have accrued on such transportation are exempt from the tax.

[¶ 233] Art. 58. (a) Transportation by express by mechanical motor power is not taxable unless in competition with transportation by express by rail or water. The application of the express tax on the transportation "by any form of mechanical motor power when in competition with express by rail or water of any package, parcel, or shipment by express" is dependent upon the character of and the conditions under which such services are rendered as distinguished from transportation of property by freight.

(b) Express business is defined as made up of the characteristics of regularity and fixity of route, greater care and speedier delivery than obtains as to ordinary freight; or the charge of a greater price on account of the special service rendered than is charged for the transportation of freight. Thus, persons engaged in the business of carrying parcels, packages, or shipments over a fixed and regular route, between fixed and definite terminals, who assume a higher degree of care with respect to such articles and undertake to make a speedier delivery of them than is ordinarily the case in the transportation of parcels, packages, and shipments by freight, for which services a greater price is charged than in ordinary freight deliveries are considered as furnishing transportation by express within the meaning of the law. It is considered to include local deliveries only in so far as calls at and deliveries to places of business and residences of customers are made at either terminal by such carrier as a part of the transportation over regular routes between fixed terminals, and as a service prior or subsequent to carriage over such route. The word "terminal" may mean either the station or other facility at the end of a transportation line, or it may simply describe a terminus. But the termini must be definitely fixed and designated in order to give the route between the two the essential characteristics of regularity and fixity. Regularity of schedule is not necessary provided there is a consistency in the running of trips over the routes regularly. A carrier transporting over such route may in given instances, where it is convenient, deliver packages carried over such route without carrying them to the terminal at the end of the route, but in such case the tax is nevertheless applicable as such business is a part of the carriage done by the carrier over the regular route. However, such deviations must not be so constant as to do away with any idea of regularity of route.

It is recognized that the provisions stated herein may not cover all such services rendered by carriers under various conditions, and special cases should be submitted to the Commissioner of Internal Revenue for determination.

(c) A company engaged in transporting baggage exclusively, and which does not transport other parcels or packages, is not engaged in the business of transporting parcels and packages by express.

(d) Parcel delivery or drayage companies engaged in city delivery or ordinary local hauling are not engaged in an express business such as is contemplated in this section and transportation services rendered by them are not subject to the express tax.

TRANSPORTATION OF PERSONS.

[¶ 234] Section 500, subdivision (c), of the act imposes:

A tax equivalent to eight per centum of the amount paid for the transportation of persons by rail or water, or by any form of mechanical motor power on a regular established line when in competition with carriers by rail or water, from one point in the United States to another or to any point in Canada or Mexico, where the ticket or order therefor is sold or issued in the United States, not including the amount paid for commutation or season tickets for trips less than thirty miles, or for transportation the fare for which does not exceed 42 cents.

SERVICES AND FACILITIES TAXABLE—GENERAL PROVISIONS.

[¶ 235] Art. 59. Application of tax.—The 8 percent tax applies to amounts paid for transportation of persons by carriers, as follows:

(a) From a point in the United States to another point therein, even though the persons pass out of the United States in the course of such transportation.

(b) From a point in the United States to a point in Canada or Mexico, where the ticket or order therefor is sold or issued in the United States.

(c) From a point in the United States to another point therein, or—where the ticket is sold or issued in the United States—from a point in the United States to a point in Canada or Mexico, when such transportation is part of through transportation to or from a foreign country, other than Canada or Mexico.

The tax is held to apply to each and every service and facility, except passengers' meals and hotel accommodations, rendered by or on behalf of carriers in connection with transportation, as herein defined, of persons, where the transportation in connection with which the service or facility is rendered is subject to the tax.

[¶ 236] NOTE. Payments made to cover deficiency under a guarantee of fixed revenue for the operation of a passenger train are not taxable. In a letter dated January 13, 1920, to the Lehigh Valley R. R., signed by Chas. V. Duffy, Coll. of Int. Rev. of Newark, N. J., the following ruling of the Commissioner was embodied: "Upon consideration of this question it is the view of this office that payments received under such guarantee are not subject to tax. Under the Revenue Acts of 1917 and 1918 the tax is imposed on 'the amount paid for the transportation of persons.' Payments made to the railroad company under a contract of guarantee are not made for the transportation of persons but in fulfillment of a contractual obligation. While the contract under which the payments are made relates to transportation, the payments are not made for a transportation service within the meaning of the law."

[¶ 237] Art. 60. Regular-established line.—The phrase "a regular-established line" as used in section 500, subdivision (c) is held to mean a regularity of operation of transportation facilities by motor power between definite points which are connected by rail or water routes. It is not necessary that the automobile or motor transportation pursue a specified route of travel. Regularity of operations of the motor transportation, which is the essential element of "a regular-established line," means regularity as to termini or route, without regard to the regularity of schedule, so long as the operation occurs more or less frequently. The term implies that the person rendering the service maintains and exercises control over the direction, route, time, number of passengers carried, etc. It implies also that the primary contract between the operator and the person served is for the transportation of the person and not for the hire or use of the machine.

[¶ 238] Art. 61. Transportation by airplane or airship.—Payments for the transportation of persons by airplane or airship are subject to tax if the

service is rendered over a regular-established line in competition with carriers by rail or water.

[¶ 239] Art. 62. **Round-trip ticket.**—The tax applies to the amount paid for, or applicable to such transportation, including the charge paid for a round-trip ticket, provided such amount is in excess of 42 cents.

[¶ 240] Art. 63. **Commutation and season tickets.**—The term “commutation or season tickets,” as used in section 500, subdivision (c) of the act, is held to include all forms of tickets issued and intended for use for a certain number of trips between two given termini, whether limited or unlimited as to the time in which they are to be used.

The phrase “for trips less than 30 miles,” as used in said subdivision of the act in connection with commutation and season tickets, is held to mean for less than 30 constructive miles in instances where the rate for transportation is fixed on the constructive mileage.

[¶ 241] Art. 64. **Zone system.**—If a person pays or a carrier collects the fare for a continuous journey at intervals in amounts of less than 42 cents, as in the zone system, the tax must be collected on the total charges from starting point to final destination of such person, if the charges aggregate 43 cents or more.

[¶ 242] Art. 65. **Combination fares.**—In cases in which continuous transportation is secured, either by the use of the same or different kinds or classes of tickets, or by the use of such tickets in connection with a cash fare, the tax applies, provided the total amount paid for such transportation exceeds 42 cents.

[¶ 243] Art. 66. **Railroad and automobile combined fare (as amended by T. D. 2995).**—Where a ticket is sold covering combined railroad and automobile transportation (including transportation by any form of mechanical motor power), the tax attaches to the amount paid for the ticket provided such motor transportation is over a regularly established line and in competition with carriers by rail or water. Where a part or the whole of the motor transportation is not over a regular established line or is not in competition with carriers by rail or water, it must be represented by a separate coupon and the amount paid for such transportation is not taxable.

[¶ 244] Art. 67. **Competition of motor transportation with rail or water transportation.**—When persons are transported between two points by mechanical motor power and rail or water transportation is furnished between the same points, competition such as is referred to in section 500 (c) is deemed to exist if in the absence of the motor transportation the trip could be made by rail or water.

When motor transportation is in competition with rail or water transportation for a part of the automobile route, and not in competition for the remaining part, the total amount paid for the motor transportation is taxable unless the total amount paid is divisible on a distance basis, in which event the tax will apply only to the charge for that part of the motor transportation which is in competition with the rail or water transportation.

SERVICES AND FACILITIES TAXABLE—MISCELLANEOUS PROVISIONS.

[¶ 245] Art. 68. **Tickets bought, and wholly or partially unused, prior to November 1, 1917.—The act.**—Section 501, subdivision (b) of the act, in part, provides:

If a ticket (other than a mileage book) was bought and partially used before November 1, 1917, it shall not be taxed, but if bought but not so used before section 500 takes effect, it shall not be valid for passage until the tax has been paid and such payment evidenced on the ticket in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

[§ 246] Art. 69. **Manner of evidencing payment of tax on such tickets.**—Payment of the 8 per cent tax upon tickets bought but not used prior to November 1, 1917, shall be evidenced by indorsement thereon by and over the signature and title of the employee collecting the ticket, showing the payment of the tax.

[§ 247] Art. 70. **Special provisions relating to such tickets.**—Employees collecting such tickets presented for passage must require the payment of taxes on any ticket, excluding commutation and season tickets, the sale date of which is prior to November 1, 1917, unless such ticket and the conditions under which it is presented conclusively show that the ticket has been used prior to November 1, 1917, for a part of the journey called for by it. If the return portion of a round-trip ticket sold before November 1, 1917, be presented for a continuation of the journey, the tax does not apply. Commutation or season tickets sold and partially used before November 1, 1917, are not taxable if presented after that date for the remainder of the journey or journeys called for.

[§ 248] Art. 71. **Partially used mileage books paid for before November 1, 1917—The act.**—Section 501, subdivision (b) of the act, among other things, provides:

If a mileage book used for such transportation or accommodation was purchased before November 1, 1917, or if cash fare is paid, the tax imposed by section 500 shall be collected from the person presenting the mileage book, or paying the cash fare, by the conductor or other agent, when presented for such transportation or accommodation, and the amount so collected shall be paid to the United States in such manner and at such times as the Commissioner, with the approval of the Secretary, may prescribe.

[§ 249] Art. 72. **Provisions relating to such books.**—The provision applies whether the mileage book was purchased in the United States, Canada, or Mexico.

Amounts collected pursuant to the above-quoted provisions shall be reported and returned as herein prescribed in respect of other charges collected by carriers for transportation of persons.

If a mileage book sold in the United States prior to November 1, 1917, be presented for a mileage exchange ticket, or on a train for transportation, the 8 per cent tax applies on the sale value of the coupons or scrip remaining in such book, and shall be collected by the employee to whom such book is presented for transportation; evidence of the payment of such tax shall be indorsed thereon by and over the signature and title of the employee collecting the tax.

[§ 250] Art. 73. **Mileage books purchased in the United States.**—The 8 per cent tax applies to the gross amount paid for a mileage book, as and when collection is made therefor.

If an evidence of right to exemption be delivered to the carrier at the time of purchase of a book, such book shall be stamped "Exempt from tax."

[§ 251] Art. 74. **Mileage books purchased in Canada or Mexico.**—The 8 per cent tax applies to the amount paid for the coupons lifted in the United States from mileage books purchased in Canada or Mexico when used for transportation (a) from one point in the United States to another, even though such journey involve passing out of the United States, or (b) from a point in the United States to any point in Canada or Mexico, or (c) from a point in the United States to another point therein or to a point in Mexico or Canada, when such transportation is part of through transportation to or from a foreign country other than Canada or Mexico, and shall be collected when the coupons are lifted.

The tax does not apply to the amount paid for the coupons lifted from

mileage books purchased in Canada or Mexico when used for through transportation from a point in Canada or Mexico to a point in the United States.

[¶ 252] Art. 75. The 8 per cent tax applies to all cash fares paid on trains from a point in the United States to a point in the United States, Canada, or Mexico, provided the total cash fare for a continuous journey exceeds 42 cents.

[¶ 253] Art. 76. **Party tickets.**—The 8 per cent tax applies to the total amount paid for a party ticket.

[¶ 254] Art. 77. **Prepaid orders.**—The taxes applicable to amounts paid for transportation, as well as the taxes applicable to amounts paid for accommodations in sleeping and parlor cars and on vessels, apply in like manner to amounts paid for prepaid orders calling for such transportation and accommodations, or either of them. The ticket for the transportation covered by a prepaid order shall be deemed sold and issued at the point where the initial carrier's transportation begins.

Where a carrier or agency, in collecting the amount paid for such prepaid order, acts on behalf of any or all of the several carriers who are to furnish the services or facilities covered, the carrier or agency first referred to shall collect the taxes on the total charges for such prepaid order as and when such charges are collected, and remit such total charges and taxes to the initial carrier issuing the ticket, and the initial carrier shall return and pay such taxes.

[¶ 255] Art. 78. **Exchange orders.**—Where an exchange order is issued in the United States, Canada or Mexico as part of or in connection with through transportation the ticket for which the exchange order is exchanged shall be deemed to be a ticket sold and issued at the point where the exchange order was issued. An exchange order sold in the United States for through transportation to a point in the United States, Canada, or Mexico is held to be subject to the tax upon the total amount of charges paid, even though the order calls for an exchange for another ticket in Canada or Mexico. Where an exchange order is issued outside the United States, Canada, or Mexico as part of or in connection with through transportation, the ticket for which the exchange order is exchanged shall be deemed to be a ticket sold and issued at the point where such exchange is made.

The tax applies to any additional amount paid in the United States in connection with a ticket or an exchange order issued in Canada, Mexico, or any other foreign country.

[¶ 256] Art. 79. **Steamship orders.**—The provisions contained in article 78 as respects exchange orders and tickets issued in exchange therefor similarly apply to steamship orders and tickets issued in exchange for steamship orders.

[¶ 257] Art. 80. **Excess baggage.**—The 8 per cent tax applies to the amount paid for transporting baggage in excess of the free allowance, provided the amount so paid exceeds 42 cents.

[¶ 258] Art. 81. **Storage of baggage.**—The 8 per cent tax applies to amounts paid for storage of baggage transported in connection with the transportation of persons, provided the amount paid exceeds 42 cents.

[¶ 259] Art. 82. **Computation of tax.**—In determining if the amount paid for excess baggage or storage of baggage charges exceeds 42 cents, amounts so paid are considered separately from amounts paid for the transportation of the person.

[¶ 260] Art. 83. **Corpses.**—The amount paid for the transportation of a corpse is subject to the 8 per cent tax if the corpse be transported on a pas-

senger ticket or an excess-baggage check. If, however, a corpse be transported by freight or by express, the freight or the express tax, as the case may be, applies.

[¶ 261] Art. 84. **Extra fares for special services or facilities.**—If an extra fare for special services be charged in addition to the transportation rate, the 8 per cent tax applies, and shall be collected thereon.

The foregoing provision applies to amounts paid for additional passenger tickets purchased or fares paid for exclusive occupancy of drawing rooms, compartments, or sections in sleeping or parlor cars or accommodations furnished on steamers.

[¶ 262] Art. 85. **Chartered cars or trains or passenger boats.**—A tax of 8 per cent applies to the charge for a chartered or special car or train or passenger boat, including sleeping, parlor, and private cars, for the purpose of transporting persons, whether such charge be a lump sum or on a per capita basis. (See paragraph 236.)

SERVICES AND FACILITIES NOT TAXABLE.

[¶ 263] Art. 86. **Cases in which tax does not apply.**—The 8 per cent tax does not apply to amounts paid for transportation of persons by carriers, as follows:

(a) From the last port touched in the United States to a foreign port other than a Canadian or Mexican port.

(b) From a point in Canada or Mexico to a point in the United States.

(c) From a point in Canada to another point therein, and provided such transportation be covered by tickets issued in Canada and be a part of through transportation, even though the persons pass through the United States in course of such transportation.

(d) From a point in Mexico to another point therein, and provided such transportation be covered by tickets issued in Mexico and be part of through transportation, even though the persons pass through the United States in course of such transportation.

(e) From a point in Canada to a point in Mexico, or vice versa, provided such transportation be covered by tickets issued in Canada or Mexico and be part of through transportation.

(f) Where the amount paid for transportation is 42 cents or less.

(g) In case of commutation or season tickets for trips less than 30 miles.

(h) Where persons are carried free under the provisions of Federal or State laws.

TAX ON AMOUNTS PAID FOR ACCOMMODATIONS IN PARLOR OR SLEEPING CARS OR ON VESSELS.

[¶ 264] Section 500, subdivision (d), of the act imposes:

A tax equivalent to eight per centum of the amount paid for seats, berths, and state-room in parlor cars, sleeping cars, or on vessels, used in connection with transportation, upon which tax is imposed by subdivision (c).

[¶ 265] Art. 87. **Accommodations to which tax applies.**—The foregoing provision is held to include application to the amount paid for each drawing room or compartment in parlor or sleeping cars or on vessels and to seats in observation or composite cars.

In case of a chartered sleeping, parlor, or private car, the total amount paid for the haul and the special accommodations are, exclusive of meals, subject to an 8 per cent tax. If separate charges are made covering the combined services and such charges are paid to different parties, such parties will each be required to collect and return the taxes due.

The 8 per cent tax applies to amounts paid for all of the accommodations referred to above, for use in connection with transportation between points in the United States or from a point in the United States to a point in Canada or Mexico, whether payment thereof be made in the United States or elsewhere, and even though such transportation be part of through transportation to or from a foreign country, other than Canada or Mexico. The tax also applies to amounts paid for commutation books purchased in the United States calling for any of such accommodations, for use as above stated, in which event the tax thereon shall be paid as and when collections are made of the amount paid for such books. If such commutation books, however, be purchased outside the United States, the tax applies to the amount paid for the coupons lifted therefrom calling for accommodations between or from points in the United States, as in this paragraph first specified, and such tax shall be collected as and when such coupons are lifted.

Where the amount paid for transportation of persons includes accommodations on vessels, the entire amount paid for the transportation, including such accommodations, is subject to the 8 per cent tax.

[¶ 266] Art. 88. **Accommodations to which tax does not apply.**—The 8 per cent tax does not apply to—

(a) Amounts paid for tickets, including commutation books, paid for and partially used before November 1, 1917.

(b) Accommodations furnished free under the provisions of Federal or State laws.

[¶ 267] Art. 89. **Duties of agents collecting charges on behalf of carriers furnishing such accommodations.**—Where an agent of one carrier in collecting the amounts paid for seats, berths, or staterooms in parlor or sleeping cars or on vessels acts on behalf of any or all of the several carriers who are to furnish the accommodations involved, such agent shall collect the taxes on the total charges as and when such charges are collected and remit to such other carriers the respective amounts, charges, and taxes, collected on their behalf, and such other carriers shall return and pay such taxes.

[¶ 268] Art. 90. **Competition of American water transportation lines with foreign water transportation lines.**—The application of the 8 per cent tax as provided in Part IV (paragraphs 234-268) is subject to the proviso of **Section 500 (c)** of the act, which reads as follows:

Provided, That where such water transportation lines are in competition between American ports with foreign water transportation lines from adjacent foreign ports, the tax imposed under this subdivision on amounts paid for water transportation between American ports shall not exceed the amount of the transportation tax to which such foreign water transportation lines are subjected by their governments corresponding to this tax.

TRANSPORTATION OF OIL BY PIPE LINE.

[¶ 269] **Section 500**, subdivision (e), imposes:

A tax equivalent to eight per centum of the amount paid for the transportation on or after date of oil by pipe line.

[¶ 270] Art. 91. **Definition of oil.**—The word "oil," as used in the foregoing subdivision, is held to mean crude petroleum and such of its products as may be transported by pipe line.

[¶ 271] Art. 92. **Miscellaneous provisions.**—Section 501, subdivision (d), provides that the tax imposed by subdivision (e) of section 500 shall apply to all transportation of oil by pipe line. Subdivision (c) of section 501 provides certain exemptions applicable to transportation of property by rail, by water, or by mechanical motor power, but it specifically excludes the transportation of oil by pipe lines from said exemptions, whether the oil is transported for sale, storage, or for any other reason, and without regard to the ownership of

the oil which is transported, except in the case of a common carrier owning a pipe line through which it transports oil for use in its own operations as a common carrier. In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax can not be computed from actual bona fide rates or tariffs it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

Amounts paid for transportation of oil by pipe line commencing prior to April 1, 1919, although the transportation does not end until after that date, are subject to the tax imposed by the revenue act of 1917. Such amounts paid for the transportation of oil by pipe line are subject to the tax imposed by the revenue act of 1918 only when the transportation commences on or after April 1, 1919. The date when such amounts are paid for such transportation does not affect the question as to which rate of tax applies.

Reference should be had to Parts I and II (pars. 170-175 and 176-231), the provisions whereof, in so far as they are applicable to transportation of oil by pipe line, are held to control in connection with the application of the tax imposed under subdivision (e) of section 500 of the act.

EXEMPTIONS.

GOVERNMENTAL EXEMPTION.

[§ 272] **Section 500**, subdivision (h), of the act provides:

No tax shall be imposed under this section upon any payment received for services rendered to the United States or to any State or Territory or the District of Columbia. The right to exemption under this subdivision shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

[§ 273] **Art. 93. Nature of exemption.**—The words "State" and "Territory" include political subdivisions thereof, such as counties, cities, towns, and other municipalities. The exemption, however, is to be secured only upon the production of such evidence of right to exemption as is called for by these regulations.

[§ 274] **Art. 94. Municipalities operating utilities.**—Payments made by municipalities for transportation of property are exempt from the tax, including payments for transportation of commodities used in the operation of light, water, street railway, and other plants.

[§ 275] **Art. 95. Foreign Governments.**—Amounts paid by foreign Governments for transportation and transmission services are subject to the taxes imposed under section 500.

[§ 276] **Art. 96. Government agencies.**—Transportation services rendered to agencies of the United States are exempt from the tax. Such agencies include the American National Red Cross, United States Shipping Board Emergency Fleet Corporation, United States Food Administration Grain Corporation, United States Fuel Administration, United States Housing Corporation, Commission on Training Camp Activities, War Savings Committee, Liberty Loan Committee, War Industries Board, Federal Farm Appraisers, Federal land banks, Federal reserve banks, Panama Railroad Co., and similar agencies supported by Government funds.

Revenue derived from the operation of carriers under Federal control is held to be Government funds and amounts paid from such funds for transportation services directly connected with the operation of the railroads are

exempt from the tax, such transportation being service rendered to the United States. Shipments of material to railroad-equipment companies for use in the construction of new cars or other equipment purchased by the United States Railroad Administration are subject to the transportation tax unless the United States Railroad Administration specifically agrees to pay the transportation charges on such shipments.

(a) EXEMPTION—PROPERTY.

[¶ 277] Art. 97. **Evidences of right to exemption.**—The right to exemption under section 500 from the tax on amounts paid for the transportation of property shall be evidenced in one of the following ways:

- (a) Payment of such amounts directly to the carrier by the Government to which the services are rendered.
- (b) A standard form of exemption certificate for use of the Federal Government, substantially in form following:

EXEMPTION CERTIFICATE.

TAX ON TRANSPORTATION OF PROPERTY

TREASURY DEPARTMENT.

Office Commissioner of Internal Revenue.

Form 750.

Date.....

Place of payment of charges.....

Name of carrier collecting charges.....

I certify that the transportation charges on the property described in the waybill, bill of lading, freight bill, or express receipt, dated....., covering a shipment carried from.....to.....in car initial and No..... or vessel named.....to which this exemption certificate is attached, have been or will be paid by the United States, and that the transportation charges thereon, amounting to \$....., are exempt under section 500 of the revenue act of 1918 from the tax imposed by said act.

(Signature of Government officer or employee.)

(Federal department or establishment.)

(Title.)

PENALTY FOR FRAUDULENT USE, \$1,000 AND IMPRISONMENT.

NOTE.—Transportation agents should not accept this certificate unless satisfied through the production of proper credentials or otherwise, that the person who signed it is an officer or employee of the Federal Government.

A separate exemption certificate will be required for each shipment.

A blanket certificate covering two or more shipments or a given period will not be accepted as evidence of right to exemption.

This certificate should not be issued to secure exemption upon transportation charges in the case of "lump-sum" contracts, or when the material transported is sold to the Government at a delivered price.

(c) A form of exemption certificate, substantially in accord with the preceding form, for use by any of the States or Alaska or Hawaii, or any political subdivision thereof, or the District of Columbia, showing the political subdivision by which the charges have been or will be paid.

(d) The exemption does not apply to transportation charges which are not actually borne by a governmental agency. Thus, in the case of property sold to such an agency f. o. b. destination, the charges for transporting the property to point of delivery, being paid by the seller, would be taxable.

State, Territorial, and political subdivisions thereof will use a similar form.

(b) EXEMPTION—PERSONS.

[¶ 278] Art. 98. **Evidences of right to exemption.**—The right to exemption under section 500 from the tax on amounts paid for the transportation of persons shall be evidenced in one of the following ways:

(a) A standard form of transportation request as prescribed and used by the Federal and State Governments.

(b) A standard form of exemption certificate for use of officers or employees of the Federal Government, substantially in form following:

Form 731.
U. S. Internal Revenue.

EXEMPTION CERTIFICATE.

TAX ON THE TRANSPORTATION OF PERSONS.

Place of issue of ticket..... Date.....

Name of carrier.....

Number.		Indicate by X.		Service (indicate amount paid, in proper space).				
Ticket.	Form.	Rail.	Water.	Transportation.	Seat.	Berth.	State-room.	Excess baggage.
				\$.....	\$.....	\$.....	\$.....	\$.....

From

To

Via
(Give name or names of transportation company.)

I certify that the charges for the services indicated above have been, or will be, paid for by the United States, are incurred in the performance of my official duties, and are exempt under section 500 of the revenue act, 1918, from the tax imposed by said act.

.....
(Federal Department or establishment)

.....
(Signature of Govt. officer or employee.)

PENALTY FOR FRAUDULENT USE,
\$1,000 and imprisonment.

.....
(Official title.)

(Reverse Side)

NOTE.—A separate exemption certificate will be required for each ticket furnished, fare collected, or service rendered, except that officers or employees representing the interests exempt, when conducting prisoners or other persons whose transportation costs are paid by such interests, may give one certificate to cover the party.

1. A form of exemption certificate, substantially in accord with this form, should be provided by the States, the Territories of Alaska and Hawaii, and the District of Columbia, or the political subdivisions thereof for the use of officials and employees. Such certificates will not be furnished by the Internal Revenue Bureau.

2. Where the person transported is incurring the charge in the performance of his official duties as an officer in the Army or Navy, a standard form of exemption certificate for such use should be provided as follows:

EXEMPTION CERTIFICATE

I certify that ticket No....., for transportation from....., 19...
to....., via..... is on account of official business and not for private purposes, and is exempt from the tax imposed by the Revenue Act of 1918.

.....
(Name of officer.)

.....
(Rank.)

.....
(Branch of service.)

NOTE.—Forms 1 and 2 should be on the same size paper as this form.

(c) A form of exemption certificate, substantially in accord with the preceding form, for use by any of the States or Alaska or Hawaii, or any political subdivision thereof, or the District of Columbia, showing the political subdivision by which the charges have been, or will be, paid.

Transportation agents must not accept this certificate unless the officer or employee issuing it shows satisfactory credentials.

(d) Where the person transported is incurring the charge in the performance of his official duties as an officer in the Army or Navy, a standard form of exemption certificate for such use as follows:

EXEMPTION CERTIFICATE.

....., 19....
I certify that ticket No.....for transportation from.....
to....., via....., is on account of official
business and not for private purposes and is exempt from the tax imposed by section 500
of the revenue act of 1918.
.....
.....
(Rank.)
.....
(Army or Navy.)

An appropriate form of exemption certificate must be delivered to the conductor of the train upon which an officer or employee of the United States, or of any State, or Alaska or Hawaii, or any political subdivision thereof, or of the District of Columbia, is traveling upon official business, using a mileage book not marked exempt from tax, and upon which the tax has not been paid, each time mileage coupons are lifted; otherwise the tax must be collected on the sale value of the coupons lifted.

[¶ 279] Art. 99. **Ambassadors, ministers, and diplomatic representatives.**—Ambassadors, ministers, and properly accredited diplomatic representatives of any foreign government to the United States are exempt from the payment of taxes on amounts paid for transportation services rendered them within the United States.

The following form may be used to secure exemptions when signed by an ambassador, minister, or any properly accredited diplomatic representative of a foreign government:

Form No.....
....., 19....
I certify that ticket No.....for transportation from.....
.....to.....via.....is for use of.....
....., attached to my....., and is exempt from tax.
.....
(Title.)

(c) EXEMPTION PROVISIONS—COST-PLUS CONTRACTS.

[¶ 280] Art. 100. **Cost-plus contracts.**—Amounts paid for the transportation of freight or persons, which are finally paid by the Government under cost-plus contracts, are exempt from the taxes imposed by section 500 of the act.

(1) Where a contractor does work for the Government, the contract price of which is the cost plus a certain percentage, the amount received by a carrier for the transportation of property used or to be used by the contractor in the Government work falls within the exemption from the transportation tax as provided by section 500.

In any such case, as in other cases of exemption, the prescribed certificate of exemption (Form 750) must be used and must be signed by a Government officer or employee. A certificate signed by the contractor does not furnish the required evidence of exemption.

(2) Exemption may be claimed on amounts paid for the transportation of persons employed by a contractor working for the Government under a cost-plus contract where the transportation charge of the employee is an item in the cost of the work and hence will be finally paid by the Government.

In such case the right to exemption from the tax on the amount paid for transportation of such employee shall be evidenced by an exemption certificate signed by a governmental officer or employee, substantially in the following form:

EXEMPTION CERTIFICATE.

I certify that ticket No....., 19....
 to....., via....., is for use of an employee of
 and is to be paid for by the United States Government.
 (Name of contractor.)

 (Signature of governmental officer or employee.)
 Place of issue.....
 Name of carrier..... (Title.)

GENERAL EXEMPTION PROVISIONS—PROPERTY AND PERSONS.

[¶ 281] Art. 101. **Credentials.**—The credentials referred to on the margin of the exemption certificates are such papers, documents, or other evidences as will reasonably assure the officer, agent, or other employee collecting the transportation charge that the officer or employee issuing such certificate is an officer or employee of the Government on whose behalf the certificate is issued.

[¶ 282] Art. 102. **Forms to be furnished.**—Exemption certificates, Forms 731 and 750, will, on request, be furnished by the Treasury Department to officers and employees of the Federal Government entitled thereto. A State, Territory, or political subdivision thereof, or the District of Columbia, will be required to furnish its own blanks for claiming exemption from the tax.

[¶ 283] Art. 103. **Lump-sum Government contracts.**—Where a contractor does work for the Government, the contract price of which is a lump sum, the exemption does not apply to amounts paid for transportation of property used or to be used by the contractor in connection with the work.

[¶ 284] Art. 104. **Exemption—Persons.**—Exemption may be claimed in the case of persons only where the person transported is incurring the charge in performance of his official duties as an officer or employee of the United States or of a State or Territory, or any political subdivision thereof, or of the District of Columbia. Thus, transportation charges paid by soldiers traveling on furlough at their own expense are not exempt. The fact that the amount of mileage or other allowance paid or made by the Government for transportation of an officer or employee in the performance of his official duties may be more than sufficient to reimburse him for the transportation payment does not prevent the application of the exemption provision to such payment.

The exemption provided for applies to amounts paid as fares and to amounts paid for accommodations in parlor or sleeping cars or on vessels in connection with transportation upon which tax is imposed by subdivision (c), section 500.

[¶ 285] Art. 105. **Certificate required when charges paid.**—An exemption certificate for property or persons or other evidence of right to exemption must be delivered to the carrier by the person paying the charges when the charges are paid; otherwise there shall be no exemption from the tax.

[¶ 286] Art. 106. **Prepaid charges.**—Where transportation charges, either prepaid or collect, are paid by the shipper at origin of the shipment, or by a contractor at destination of the shipment, upon property shipped to the United States Government or to a State or Territory or the District of Columbia, or to a Government contractor, and the payment of such charges is in behalf of the Government, and the amount paid therefor is borne by the Government, such amounts are not subject to the tax. Exemption certificates

properly signed by a governmental officer or employee must be furnished to the carrier as evidence of such rights to exemption.

[¶ 287] Art. 107. **Indorsement of certificates.**—An exemption certificate signed by a contractor or any person acting temporarily as an agent of the Government in prepaying transportation charges does not furnish the required evidence of exemption. All exemption certificates must be signed by a governmental officer or employee.

[¶ 288] Art. 108. **Separate certificates.**—Exemption certificates must be furnished with each consignment. An exemption certificate covering a number of consignments will not be accepted by a carrier.

[¶ 289] Art. 109. **Carriers to record and file certificates.**—Carriers shall, in accepting exemption certificates and transportation requests, see that they are duly filled out. In accepting any evidence of right to exemption, carriers shall note on their records, opposite the entry of the collection, reference to such evidence; they must file and retain in the offices or places where such collections are made, or where records of such collections are kept, all such exemption certificates honored by them. All evidences, and all records of collections of taxes and of charges for transportation, shall be subject to inspection by accredited representatives of the Commissioner of Internal Revenue.

PAYMENTS, COLLECTIONS, RETURNS, AND PENALTIES.

PAYMENT, COLLECTION, REPORTING, RETURNING, AND REMITTANCE OF THE TAXES—PENALTIES.

[¶ 290] Section 501, subdivision (a), of the act provides:

That the taxes imposed by section 500 shall be paid by the person paying for the services or facilities rendered.

[¶ 291] Section 502 of the act provides:

That each person receiving any payments referred to in section 500 shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under subdivision (c) or (d) of section 501 to the collector of the district in which the principal office or place of business is located. * * *

The returns required under this section shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

[¶ 292] Art. 110. **Payment of taxes.**—All taxes imposed by section 500 shall be paid by the person from whom or from which the carrier collects the charges for the services or facilities rendered. The method of adjusting transportation expense between the buyer and seller, or the consignor and the consignee, is a matter of private contract over which the Government has no jurisdiction.

[¶ 293] Art. 111. **Collection of taxes.**—All such taxes shall, as and when the charges are collected, be paid to and collected by the officers, agents, or other employees of the carrier, who collect such charges.

Where the consignee of goods pays to the carrier all the transportation charges, an amount of transportation tax which the carrier originally fails through error to collect can be collected later from such consignee regardless of any contract which he may have with the consignor of the goods.

[¶ 294] Art. 112. **Credit arrangements.**—When transportation services are rendered by any carrier as described in these regulations and credit is extended by such carrier to the person to whom such services have been rendered, the tax becomes due by the carrier to the Government and such credit is extended at the carrier's risk. In the event of a failure to collect the amounts due, the carrier is liable for the tax which should have been collected upon the amount due for the transportation charges.

[¶ 295] Art. 113. **Records—Taxes collected.**—Records of carriers, at

their respective agencies at which the tax is collected, shall be so kept as to show the application of the tax to each shipment of property, ticket sold, fare collected, or other individual transaction.

[¶ 296] Art. 114. **Records—No taxes collected.**—Should any payment for services or facilities of carriers be exempt, under the provisions of Title V, from the tax, or should the tax thereon be collectible under the terms of these regulations by any carrier other than the carrier furnishing the services or facilities, notation shall be made on the records of the carrier furnishing the services or facilities indicating the reason for not collecting the tax.

[¶ 297] Art. 115. **Records—Adjustment of taxes.**—Since, in the ordinary course of transportation, overcharges and undercharges will occur, officers, agents, and other employees of carriers are authorized, in adjusting such overcharges and undercharges, to adjust the taxes accordingly. Also, where transportation charges are based on legally published rates, and such rates are subsequently declared excessive and unreasonable and ordered reduced by the Interstate Commerce Commission, carriers making required reparation payments to shippers are authorized to refund the amount of taxes collected on the excessive charges. All redemptions or other adjustments made in connection with passenger transportation, whether by way of refund on mileage-book covers or otherwise, are to be treated as adjustments of overcharges or undercharges, as the case may be. Nothing in these regulations, however, authorizes an adjustment of a tax by a carrier in any instance where, after collection of a charge and tax, it is claimed that the charge is entitled to exemption from the tax by reason of exportation, governmental use, or otherwise. All adjustments of taxes must be recorded. They must be supported by such evidences as will fully substantiate the correctness thereof, and such evidences must be kept in the respective offices through which such adjustments are made.

Any person making a refund of any payment upon which tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against the amount included in any subsequent monthly return.

This authorization is contained in the third paragraph of section 502 of the revenue act of 1918 and relates to transportation tax imposed by said act. However, since the provisions of subdivisions (a), (b), (c), (d), and (e), section 500 of the revenue act of 1917, are practically and substantially the same as those of the corresponding subdivisions of section 500 of the revenue act of 1918, adjustments may be made in the same manner as provided in cases arising under the revenue act of 1918, and a carrier may take credit in a return filed on or after April 1, 1919, for refund of a tax which was collected under the 1917 act.

[¶ 298] Art. 116. **Records—Summaries of transactions.**—Officers, agents, and other employees of carriers shall cause to be assembled, for each calendar month, at the general office or offices of such carriers, summaries, by the several classes of the taxes specified in Form 727, revised, showing the aggregate taxes collected by their respective officers, agents, or other employees. There shall likewise be so assembled summaries of all tax adjustments. Such summaries shall show (a) the aggregate taxes of each class collected, as called for by Form 727, revised; and (b) the total amount deducted for adjustment of taxes of each class on account of overcharges, as called for by Form 727, revised.

The difference between the two items, (a) and (b), shall be the amount to be reported to the proper collector in the manner prescribed by Form 727, revised.

[¶ 299] Art. 117. **Return and remittance of taxes.**—Returns must be made on or before the last day of each month, covering taxes collected or paid during the preceding month. Returns will be made on Form 727, revised,

under oath, in duplicate, and filed with the collector of the district in which the principal office, or place of business, of the carrier is located.

The tax is due and payable to the collector at the time fixed for filing the return. Where it is found to be impossible to make the proper return within the prescribed time, request may be filed with the collector for an extension of time, and upon a proper showing the collector is authorized to fix a definite time in each instance within which the return may be filed, such extension of time not to exceed 60 days.

If the amount of tax covered by any return required to be filed under section 502 is not in excess of \$10, the return may be signed or acknowledged before two witnesses instead of under oath.

[¶ 300] Art. 118. **Penalties.**—(1) Section 502 of the act specifically provides that the taxes under section 500 shall (without assessment by the Commissioner or notice from the collector) be due at the time fixed for filing this return, and if the tax is not paid at such time there shall be added as part of the tax a penalty of 5 per cent, together with interest at the rate of 1 per cent for each full month from the time when the tax becomes due.

[¶ 301] (2) **Sec. 1308.** (a) That any person required under Titles V, * * * (which includes sections 500, 501, and 502) * * * to pay, or to collect, account for, and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment, or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall, in addition to other penalties provided by law, be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return, or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax, shall be guilty of a misdemeanor, and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: **Provided, however,** That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes as amended * * *.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership who, as such officer, employee, or member, is under a duty to perform the act in respect of which the violation occurs.

CLAIMS FOR REFUND OF TAX.

[¶ 302] **Section 3220** of United States Revised Statutes as amended by section 1316 (a) of the revenue act of 1918 provides:

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all that appear to be unjustly assessed or excessive in amount or in any manner wrongfully collected * * *.

[¶ 303] Art. 119. **Who shall present claim and form to be used.**—Claims for refund of the taxes which may have been erroneously or illegally collected must be made by the person who actually paid the tax to the transportation company. Such claims for refund should be prepared on Treasury Department Form 46 and filed with the Commissioner of Internal Revenue.

[¶ 304] Art. 120. **Evidence required to support claims for refund—Export shipments.**—In submitting claims for refund on Form 46 for taxes alleged to have been erroneously or illegally collected on amounts charged for the transportation of property in the course of exportation the claimant should submit:

1, The original paid freight bills, or in cases where shipments are made prepaid and the original bills of lading are receipted to cover the payment of the charges and tax, these bills of lading should be submitted. If these original receipted bills of lading are submitted, the agent of the carrier issuing them should certify across the face of each that, "This is the only and original paid freight receipt issued to cover the payment of the charges and tax on the shipment shown hereon." In cases where order-notify shipments are made prepaid and the original order-notify bills of lading are receipted to cover the payment of the charges and tax, and these original receipted order-notify bills of lading have been surrendered to the delivering carrier and have become a part of its permanent files and therefore can not be obtained by the claimant, it will be necessary to submit in lieu of same, the certificates described below; also a statement from the agent of the carrier issuing the original receipted order-notify bills of lading that "No freight receipt has been issued to cover the payment of the charges and tax other than the original receipted order-notify bills of lading on the shipment" (identifying it specifically). In case the original paid documents are in the hands of some other agency and not procurable, the following certificate from the auditor of the carrier which received the freight charges and collected the tax should be submitted in lieu of same.

To the Commissioner of Internal Revenue:

Serial No.

This is to certify that.....

(Name of person paying the freight charge)

on paid Dollars for the

(Date of payment)

transportation of property from.....

(Point of origin)

to and on which there was collected

(Point of destination)

..... Dollars tax, and that there has been

..... refund of said

(If no refund of all or any part state "No.")

freight charges and.....

(If no refund of all or any part state "No.")

refund of tax and that no certificate has heretofore been given to said.....

..... [stating the amount of said freight charges and tax

so paid for presentation to the Commissioner of Internal Revenue, and that there will not

hereafter be given another certificate for the amount charged on this shipment for presentation

to the Commissioner of Internal Revenue, and the number of this certificate will

be entered in a record specially kept for the purpose and serially numbered and that

another certificate will not be issued therefor except on authorization from the Commis-

sioner of Internal Revenue.]

(Signed)

(Carrier)

By

(Auditor)

and in addition thereto a certificate from the person having the original paid freight bill stating that it is in his possession, the amount of the freight charges and taxes appearing thereon, and the reason for its retention and that he has marked thereon.

Certificate No., issued by

(Carrier)

on to

(Date)

(Name of person paying freight charges.)

for presentation to the Commissioner of Internal Revenue in claim for refund,

and in case the paid freight bill has been lost the certificate by the auditor of

the carrier should be submitted with an affidavit by the claimant that he has

made diligent search for such paid freight bill and that it is not to be found,

that he has never before presented claim for refund for tax paid on such ship-

ment, and that in case the paid freight bill is found it will be forwarded

promptly to the Commissioner of Internal Revenue to be attached to the orig-

inal papers.

2. The original contract, order, or proposal of purchase certified copy thereof, or certified extract therefrom pursuant to which the property in question was shipped from the point of origin to point of exportation destined to a foreign country;

3. An affidavit by the claimant that the freight moved continuously from point of origin to port or border and did not stop en route to or at the point of exportation for business purposes, private sale, manufacture, or for any reason other than in accommodation to the means of transportation;

4. A certified copy of the ship's receipt or other evidence of delivery of the freight to a vessel clearing for the foreign port to which the property was destined, or, if destined to Canada or Mexico, a certificate of the customs official or the delivering agent of the transportation company that the property in question was delivered beyond the borders of the United States.

The affidavit on Form 46 must show conclusively that no claim for exemption from the tax was presented at the time of the payment of the transportation charges; that the tax has actually been paid to the Government or to the person designated under the law to collect tax, and that no credits for the tax paid or any part thereof have been made through the adjustment of overcharges and undercharges or otherwise.

... [¶ 305] Art. 121. **Evidence required to support claims for refund—Governmental exemptions—Persons and property.**—Where claims for refund of transportation taxes paid on the transportation of property are made on Form 46, upon the ground that the transportation service was rendered to an exempt governmental agency, such claims should be supported by the original paid freight bills (or proof, as required in article 120, on claims for refund on export shipments), showing the amount of tax paid thereon; by the original contract of sale or a certified copy thereof, a verified statement by that official of the governmental agency who audits and pays the transportation accounts and keeps the records pertaining thereto, showing that transportation charges have been paid and borne directly by the particular governmental agency, and by such other evidence as may be necessary to support the said claim for refund.

In the case of the claims for refund of taxes paid on the transportation of persons on the ground of governmental exemption, such claims should be supported by the verified statement of the properly authorized official of the governmental agency authorizing the transportation, certifying that the charges in question were incurred by the claimant in the performance of his official duties, together with evidence of the payment of the tax and any other evidence that may be necessary to support the claim for refund.

The affidavit on Form 46 in both the transportation of persons and property must show conclusively that no claim for exemption from the tax was presented at the time of the payment of the transportation charges; that the tax has actually been paid to the Government or the person designated under the law to collect tax, and that no credits for the tax paid or any part thereof have been made the claimant through the adjustment of overcharger and undercharges or otherwise.

AUTHORITY FOR REGULATIONS. **Section 1309 of Revenue Act of 1918.**

[¶ 306] Sec. 1309. That the commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act.

* * * * *

[¶ 307] Art. 122. **Promulgation of regulations.**—In pursuance of this provision of the act the foregoing regulations are hereby made and promulgated and all rulings inconsistent with them are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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TAX
ON
TELEGRAPH, TELEPHONE,
RADIO, AND CABLE
FACILITIES

REVENUE ACT OF 1918
TITLE V, SECTIONS 500 (F), (G) AND (H), AND 501 (A), (C).

Law,
Regulations 57 (Revised),
and Treasury Decisions

Indexed

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LAW

REGULATIONS 57 (REVISED) AND TREASURY DECISIONS

RELATING TO

TAX ON TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES

TRANSMISSION OF DISPATCHES, MESSAGES, AND CONVERSATIONS.

[¶ 308] Sec. 500. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the revenue act of 1917—

* * * * *

[¶ 309] (f) In the case of each telegraph, telephone, cable, or radio, dispatch, message, or conversation, which originates on or after such date within the United States, and for the transmission of which the charge is more than 14 cents and not more than 50 cents, a tax of 5 cents; and if the charge is more than 50 cents, a tax of 10 cents: **Provided**, That only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons are used for the transmission of such dispatch, message, or conversation;

* * * * *

[¶ 310] (h) No tax shall be imposed under this section upon any payment received for services rendered to the United States or to any State or Territory or the District of Columbia. The right to exemption under this subdivision shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may by regulation subscribe.

IMPOSITION OF TAX.

[¶ 311] Article 1. **Imposition of the tax—Transmission.**—The tax is imposed upon the transmission of a message or conversation, by telephone, telegraph, radio, or cable. Transmission includes services rendered and facilities provided by the carrier necessary or incidental to the actual movement of the message; for example, messenger service utilized in the movement of a toll message.

Transmission begins when the message is delivered by the sender to the carrier or its agent, and continues until its receipt by the addressee or his agent. Where, therefore, a message passes by the combined facilities of several lines, there is one message and one transmission. But where a sender uses a telephone toll message to reach a telegraph office to secure the transmission of a telegraph message, the place of delivery of the telegraph message by the sender to the carrier is the telegraph office, and the transmission of the telegraph message begins there. The telephone message is a separate message and as such subject to the provisions of the act.

[¶ 312] Art. 2. **Imposition of tax—Carrier.**—The tax applies to transmission services when rendered for hire, whether or not the agency rendering them is a common carrier (section 501 (c)). Accordingly, a carrier of dispatches, messages, or conversations by telegraph, telephone, cable, or radio is held to be any person, corporation, partnership, or association who or which, for hire, furnishes the services or facilities described or referred to in section 500, subdivisions (f) and (g), of the act.

Therefore, where the lessee of a leased wire or talking circuit special service transmits messages for hire, he is a carrier of such messages and liable to the provisions of the act relative to the collection, report, and payment of the taxes thereon.

ORIGIN OF MESSAGE DETERMINES TAXABILITY.

[¶ 313] Art. 3. **Originating within the United States.**—The tax is upon the transmission by telephone, telegraph, radio, or cable of dispatches, messages, and conversations originating within the United States.

Messages transmitted from a point within the United States to a point without the United States are subject to the provisions of the act unless sent with charges "reversed" or "collect." Messages transmitted from a point without the United States to a point within the United States are not subject to the tax, unless sent with charges "reversed" or "collect."

The term "United States" includes the States, the Territories of Alaska and Hawaii, and the District of Columbia; it also includes all inland waters (such as rivers, lakes, bays, etc.) lying wholly within the United States, and, where an international boundary line divides inland waters, the parts of such inland waters as lie within the boundary of the United States; and also the waters known as a marine league from low tide on the coast line. Radio messages sent from ships within the above limits are therefore subject to the provisions of the act.

[§ 314] Art. 4. **Reversed or collect messages.**—The point of origin of messages transmitted with charges "reversed" or "collect" is the point at which the charge is collectible; that is, the point of receipt of the message by the addressee.

[§ 315] Art. 5. **Originating on or after April 1, 1919.**—The tax is imposed upon the transmission by telephone, telegraph, radio, or cable of dispatches, messages, and conversations originating on or after April 1, 1919. The time of the payment of the charge is immaterial.

BASIS, RATE, AND COMPUTATION OF TAX.

[§ 316] Art. 6. **Basis, rate, and computation of tax.**—The basis for the computation of the tax is the amount of the charge for the transmission of the message. (As to the meaning of transmission, see article 1.) The term "the charge" means the amount charged by the carrier for the transmission of the particular message. Such charge may be due in money, services or in any other valuable consideration.

Only two amounts of tax are provided, 5 cents and 10 cents, imposed as follows:

(1) 5 cents on messages the charge for the transmission of which is more than 14 cents and not more than 50 cents;

(2) 10 cents on messages the charge for the transmission of which is more than 50 cents.

[§ 317] Art. 7. **Franks.**—The fact that a message is transmitted under frank is immaterial to the determination of the taxability of the message. If the message is in fact transmitted free, no tax applies; but if the carrier in fact makes a charge, in money, services or any other consideration, for the transmission of the message, the tax applies and is to be computed upon the amount of the charge imposed.

[§ 318] Art. 8. **Overtime telephone messages.**—The tax on overtime telephone messages is to be computed upon the total charge for the transmission of the message. The amount of the initial rate for such messages is immaterial.

[§ 319] Art. 9. **Messages transmitted under contract.**—Where, by contract, a telegraph, telephone, radio, or cable company agrees, in consideration of the payment of a lump sum or of the performance of services, to transmit messages on frank, such messages are subject to the tax imposed by this section (500 (f)) of the act. The tax on each such message is to be computed upon the amount of the regular established charge for the transmission of similar messages for ordinary customers, calculated at the regular fixed rate provided in the tariffs of the transmitting carrier. The questions as to whether such messages relate to the operation of the business of a common carrier and whether

they are "on line" or "off line" are immaterial. Thus, a telegraph company agrees to transmit over its lines on a railroad line all messages relating to railroad business "free" and all such messages over its lines off the railroad lines "free" to an amount not exceeding \$10,000 per year calculated at its regular rates, and all messages over that amount at half rates, in consideration of services to be performed by the railroad in the transportation of men and materials of the telegraph company. All such messages, whether "on line" or "off line," and whether "free" or at half rates, are subject to the tax provided by this section (500 (f)) of the act. The tax must be computed, collected, and paid upon each such message. (Where common carrier is a railroad under Federal control, see article 14.)

EXEMPTIONS.

[§ 320] Art. 10. **Exemption—Business of transmitting carrier.**—The transmission of messages involved in the operation of the business of the transmitting carrier, as such, is not subject to the tax.

[§ 321] Art. 11. **Exemption—Charges of 14 cents or less.**—Dispatches, messages, or conversations, for the transmission of which by telegraph, telephone, radio, or cable the charge is 14 cents or less, are not subject to tax. (As to the meaning of transmission, see article 1; as to the computation of the tax, see articles 6-9.)

[§ 322] Art. 12. **Exemption—Services rendered to the United States or to any State or Territory or to the District of Columbia.**—Telephone, telegraph, cable, and radio dispatches, messages, and conversations relating to Government business, which originate in the United States and which are a charge against the Treasurer of the United States, the District of Columbia, a State, or Territory, and are paid from the funds thereof, are exempt from the tax. Messages, conversations, and dispatches which are not paid from such funds are not exempt from tax, even though they relate to Government business.

[§ 323] Art. 13. The words "State" and "Territory" as used in section 500 (h) of the act and in article 12 (above), include political subdivisions thereof, such as counties, cities, towns, and other municipalities.

[§ 324] Art. 14. **Government agencies.**—Services rendered to agencies of the United States are, subject to the conditions prescribed in article 12, exempt from tax. Such agencies include the American National Red Cross, United Shipping Board, Emergency Fleet Corporation, United States Food Administration, United States Housing Corporation, Commission on Training Camp Activities, War Savings Committee, Liberty Loan Committee, War Industries Board, Federal Farm Appraisers, Federal Land Banks, Federal Reserve Banks, Panama Railroad Co., and similar agencies supported by Government funds.

[§ 325] Art. 15. **Railroads under Federal control.**—Telegraph, telephone, cable, and radio dispatches, messages, and conversations transmitted for railroads under Federal control, charges for which are paid from funds of the United States, are exempt from tax, such transmission being service rendered to the United States.

[§ 326] Art. 16. **Evidence of right of exemption.**—When a message is accepted and transmitted by a carrier as a Government message, and entitled as such to exemption under section 500 from the tax on charges for transmission thereof, the right to such exemption shall be evidenced in one of the following ways:

(a) Payment of such charge directly to the carrier by the Government to which the services are rendered.

(b) A standard form of exemption certificate for use of the Federal Government, substantially in form following:
Treasury Department Form

EXEMPTION CERTIFICATE

Tax on Transmissions by Telegraph, Telephone, Radio, and Cable.

....., 19....
(Date)
Sender Place of receipt.....
Addressee Place of delivery.....
Place of payment of charges.....
Name of carrier collecting charges.....
Other identification of message, conversation or dispatch.....

I certify that the transmission charges on the message or messages to which this exemption certificate is attached have been or will be paid by the United States, and such charges thereon amounting to \$..... are exempt under section 500 of the revenue act of 1918 from the tax imposed by said act.

.....
(Signature of Government officer or employee)

.....
(Federal department or establishment)

Penalty for fraudulent use, \$1,000 and imprisonment.

NOTE: Agents of telegraph, telephone, radio and cable companies should not accept this certificate unless satisfied, through the production of proper credentials or otherwise, that the person who signed it is an officer or employee of the Federal Government.

A separate exemption certificate will be required for each message when paid for as a separate item, but where periodical payments are made for services rendered to Government officers or departments, a blanket certificate may be accepted as evidence of right to exemption.

A form of exemption certificate substantially in accord with the above form should be provided by the States, the Territories of Alaska and Hawaii, and the District of Columbia, or the political subdivisions thereof, for the use of officials and employees.

[¶ 327] Art. 17. **Exemptions — Foreign diplomats.** — (a) Ambassadors, ministers, and other properly accredited diplomatic representatives of foreign Governments to the United States are exempt from the payment of taxes upon the transmission of messages sent by or for them.

(b) The exemption does not apply to consuls or to any officials of foreign Governments other than those specified in paragraph (a).

(c) The exemption does not apply to messages the charge for the transmission of which is paid by a foreign Government, except in the cases provided for in paragraph (a).

[¶ 328] Art. 18. **Evidence of right to exemption.**—The following form may be used to secure exemption when signed by an ambassador, minister, or any other properly accredited diplomatic representative of a foreign Government:

....., 19....
(Date)
I certify that this message from to
over is transmitted by attached to
my and is exempt from tax.

.....
(Title)

.....
(Address)

LEASED WIRE AND TALKING CIRCUIT SPECIAL SERVICE.

Section 500 (g) and (h) of the Revenue Act of 1918.

[¶ 329] **Sec. 500.** That from and after April 1, 1919, there shall be levied, assessed, collected and paid, in lieu of the taxes imposed by section 500 of the revenue act of 1917—

* * * * *

[¶ 330] (g) A tax equivalent to 10 per centum of the amount paid after such date to any telegraph or telephone company for any leased wire or talking circuit special service furnished after such date. This subdivision shall not apply to the amount paid for so much of such service as is utilized (1) in the collection and dissemination of news through the public press, or (2) in the conduct, by a common carrier or telegraph or telephone company, of its business as such;

* * * * *

[¶ 331] (h) No tax shall be imposed under this section upon any payment received for services rendered to the United States or to any State or Territory or the District of Columbia. The right to exemption under this subdivision shall be evidenced in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

IMPOSITION OF TAX.

[¶ 332] **Art. 19. Imposition of the tax—Leased wire or talking circuit special service.**—The tax is imposed upon the amount paid for any leased wire or talking circuit special service.

Leased wire special service.—Leased wire special service includes exclusive leases of wires and also contracts by which the carrier agrees to furnish a circuit (that is, a wire or wires, instruments and electrical energy) for the transmission of messages in Morse characters or by spoken word between specified points or offices during specified hours. Operators may or may not be employees of the carrier.

For administrative purposes it is held that where the area covered by a leased wire special service is served by a local telephone exchange, tolls not being charged upon messages transmitted between points within such area, such special service does not come within the provisions of the act.

Talking circuit special service.—Talking circuit special service is a limited class of leased wire special service and refers to such service where the transmission is telephonic.

Such a talking circuit may by contract have one terminal at a switchboard of the carrier, allowing connection with any telephone within the local exchange area of the operating station. Such additional exchange and other incidental service is included in the term "talking circuit special service."

[¶ 333] **Art. 20. Private branch exchange service.**—Amounts paid for private branch exchange service (called P. B. X. service) where the exchange equipment is located on the premises of the lessee and is used for intercommunication between departments of the business or parts of the premises of the lessee, are not subject to tax. Any amount paid for special service at the central exchange in the handling of calls from such a private branch exchange is included in the term "private branch exchange service."

[¶ 334] **Art. 21. Tie lines.**—The term "tie lines" is used to denote a line connecting two private branch exchanges. The amount paid for rental of a tie line connecting two or more private branch exchanges located within an area served by a local telephone exchange without charging tolls, is to be considered part of the amount paid for private branch exchange service and is not subject to tax. But a tie line connecting two or more private branch exchanges not within the same local telephone exchange area, tolls being ordinarily imposed upon the transmission of messages between the points of location of the private branch exchanges, is a leased wire and the amount paid for the rental thereof is subject to the provisions of this section of the act.

[¶ 335] Art. 22. **Private lines and extension lines** are subject to the same distinction and same rules as tie lines.

[¶ 336] Art. 23. **Intercommunication and interior systems** are subject to the same provisions as private branch exchanges.

[¶ 337] Art. 24. **Long-distance terminals**.—Amounts paid for a long-distance terminal, consisting of a special terminal loop from a local toll position or a long line switchboard to the subscriber's premises, and used only for long-distance calls at the regular toll, are not subject to the tax imposed by this section of the act. Messages transmitted over such wires are subject to the "message tax" provided for in section 500 (f).

BASIS, RATE, AND COMPUTATION OF TAX.

[¶ 338] Art. 25. **Basis, rate, and computation of the tax**.—The tax imposed is to be computed at 10 per cent of the amount paid for the services specified.

The amount paid includes the contract consideration and all additional charges therein provided, including salaries of operators if in the employ of the carrier, charges for equipment, instruments, and other apparatus, drops intermediate to the terminals, branch or "leg" lines, exchange service, and overtime service. It also includes charges for incidental additional service, including charges for "service connection," "termination," and "moves" when such are involved in the special service contracted for; such charges not involved in such special service are not subject to the tax.

In the payment of any tax under this section a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. (Sec. 1313 of the act.)

[¶ 339] Art. 26. **Computation of tax—Effective date**.—The tax provided in section 500 (g) applies where (a) the amount paid for such service is paid after April 1, 1919, and (b) the service is furnished after April 1, 1919. Therefore, where leased-wire special service was furnished on or after April 1, 1919, but the consideration therefor had been paid prior to that date, the tax does not apply. Likewise, where such service was furnished prior to or on April 1, 1919, the tax does not apply, regardless of the date of the payment for the charges therefor.

[¶ 340] Art. 27. **Computation of tax—Service performed between a point within and a point without the United States**.—When leased wire or talking circuit special service is furnished between a point or points within the United States and a point or points without the United States and there is in the contract no reasonable established division of charges as domestic and foreign, the tax shall be paid and collected upon the amounts paid for incidental services or facilities furnished within the United States plus that proportion of the general contract consideration as the wire mileage within the United States bears to the total wire mileage contracted for. Where there is a reasonable division of charges as domestic and foreign provided in the contract, the tax shall be paid and collected upon the amounts specified as payments for services or facilities rendered within the United States.

EXEMPTIONS.

[¶ 341] Art. 28. **Exemptions—Services to United States, the States, the District of Columbia, and to Foreign Diplomats**.—The exemptions of services rendered the United States, a State or Territory and the District of Columbia, and foreign diplomats described in Articles 12 to 18 above, apply to this section of the act.

[¶ 342] **Art. 29. Exemptions—Public Press.**—The tax does not apply to the amount paid for so much of such special service as is utilized in the collection and dissemination of news through the public press. "Public press" is not restricted to newspapers or to any particular portion of the product of printing presses. Magazines, periodicals, trade and scientific publications, published for the information of the public, are included. Organizations such as the Associated Press and the United Press are also included.

"News" is a word to be liberally construed. Accounts of current events, public announcements, information relating to finance, science, commerce, religion, civic, or other public organizations are held to be news.

The exemption does not apply to the publisher or to the publication as such. The exemption applies only to the amount paid for so much of such service as is utilized in the collection and dissemination of news in the public press. If, however, a contract between a person or company engaged in the collection and dissemination of news through the public press and a carrier provides for leased wire or talking circuit special service to be utilized exclusively in the business mentioned, the carrier is not required to collect the tax upon the amounts paid under such contract in the absence of actual knowledge on the part of the carrier that the service is being used for other purposes.

The exemption has no application to the transmission of messages.

[¶ 343] **Art. 30. Exemption—Services utilized in the conduct of business of common carrier or telegraph or telephone company.**—The tax does not apply to the amount paid for so much of such special service as is utilized in the conduct, by a common carrier or telegraph or telephone company, of its business as such.

A common carrier is one who undertakes, for hire or reward, to transport the goods or person of such as choose to employ him from place to place.

The exemption does not apply to common carriers, telegraph and telephone companies, as such. It applies only to the amount paid for so much of such service (leased wire or talking circuit) as is utilized in the conduct by a common carrier, telegraph or telephone company, of its business as such.

Where, however, a contract between a common carrier (or telegraph or telephone company) and a telegraph, telephone, radio, or cable company provides for leased wire or talking circuit special service to be utilized exclusively in the conduct of the business of the common carrier (or telegraph or telephone company) as such, the telegraph, telephone, cable, or radio company is not required to collect the tax upon the amounts paid under such contract in the absence of actual knowledge on the part of the company that the service is being used for other purposes.

The exemption does not apply to contracts which provide merely for the transmission of messages. Thus, where a telegraph or telephone company agrees by contract with a railroad to transmit, on frank or otherwise, the messages of such railroad, its officials, or employees, in a certain manner or upon certain terms, such a contract is a contract providing for the transmission of messages, and each such message is subject to the "message" tax. (See Art. 9 above.) No exemption exists by reason of such contract. The exemption applies only to leased wire special service utilized by a common carrier in the conduct of its business as such. Thus where a telegraph or telephone company agrees by contract to set apart a certain wire or wires for the use of a railroad in the conduct of its business as such, the amounts paid for such service are not subject to tax. A proviso in such a contract to the effect that when such wire or wires are not being used by the railroad they may be used by telegraph or telephone company for the transmission of commercial messages will not change the character of the contract.

PAYMENT, COLLECTION, RETURN, AND REMITTANCE OF TAXES.

Sections 501 (a), 502, and 1309 of Revenue Act of 1918.

[¶ 344] **Sec. 501.** (a) That the taxes imposed by section 500 shall be paid by the person paying for the services or facilities rendered.

* * * * *

[¶ 345] **Sec. 502.** That each person receiving any payments referred to in section 500 shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected * * * to the collector of the district in which the principal office or place of business is located.

* * * * *

[¶ 346] Any person making a refund of any payment upon which a tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent monthly return.

The returns required under this section shall contain such information, and be made at such times and in such manner, as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return * * *.

[¶ 347] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act.

The Commissioner with such approval may by regulation provide that any return required by Titles * * * V [which includes sections 500, 501, and 502] * * * to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledge before two witnesses instead of under oath.

[¶ 348] **Art. 31. Payment of taxes.**—Taxes imposed by section 500 (f) and (g) shall be paid by the person from whom the carrier collects the charges for the services or facilities rendered.

[¶ 349] **Art. 32. Collection of taxes.**—All such taxes shall be paid to and collected by the officers, agents, or other employees of the carrier to which the charges for the services or facilities are due.

[¶ 350] **Art. 33. Credit.**—Where credit is extended by a carrier to a sender or addressee for the payment of charges for the transmission of a message, or to the lessee of special service for the payment of charges for such service, and such charges are not paid, the tax nevertheless applies and the carrier is liable for the collection thereof.

[¶ 351] **Art. 34. Records.**—Records and accounts of telegraph, telephone, radio, and cable companies showing records of (1) all dispatches, messages, or conversations originating on the lines of such company, the charge for the transmission of which is over 14 cents, whether taxable or not, (2) of leased wire and talking circuit special service rendered by the company, and (3) evidences of the right of exemption of dispatches, messages, conversations, and special service upon which tax is not collected, such records to contain sufficient information to determine the taxability of the message or service and the amount of tax, if any, upon same, shall at all times be open to the inspection of officers of the Treasury Department.

[¶ 352] **Art. 35. Returns—Contents.**—The returns of a telephone, telegraph, radio, or cable company shall be rendered on Form 727 (Revised) and shall include (a) all taxable dispatches, messages, or conversations originated by it or on its lines and (b) such leased wire or talking circuit special services as are recorded and accounted for by the reporting company and reflected in its billing records for the month, following its usual business routine.

Taxable messages which originate at the stations of rural or farmers' line associations and which are recorded and billed by the telephone company oper-

ating the exchange to which such stations are connected for service should be included in the return of said operating company. Taxable messages, if they originate at the station of such rural or farmers' line associations and are not recorded or billed by the operating company, should be reported by such association.

[¶ 353] Art. 36. **Returns—When and where rendered.**—Returns must be made for each calendar month. Such returns must be made under oath, in duplicate, and must be filed with the collector of the district in which the principal office or place of business of the company is located on or before the last day of the calendar month following the month for which the return is made. Where a return covers a tax of \$10 or less it may be signed and acknowledged before two witnesses, instead of under oath.

[¶ 354] Art. 37. **Extension of time.**—Where it is found impossible to make the proper return within the prescribed time, request may be filed with the collector for an extension of time, and upon a proper showing the collector is authorized to fix a definite time in each instance within which the return may be filed, such extension of time not to exceed 60 days.

[¶ 355] Art. 38. **Remittance of taxes collected.**—The tax is due and payable by the person collecting the tax to the collector of internal revenue at the time fixed for filing the return.

CREDITS AND REFUNDS.

Section 502 of Revenue Act of 1918.

[¶ 356] Sec. 502. Any person making a refund of any payment upon which a tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent monthly return.

Section 1310 (a) of Revenue Act of 1918.

[¶ 357] Sec. 1310. (a) That in the case of any overpayment or overcollection any tax imposed by * * * Title V [which includes secs. 500, 501, and 502] * * * the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

Section 3220 of United States Revised Statutes, as Amended by Section 1316 (a) of

Revenue Act of 1918.

[¶ 358] Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected * * *.

[¶ 359] Art. 39. **Credit for overpayment.**—Any individual, corporation, partnership, or association that has paid to the collector of internal revenue, as a tax under section 500 of the act, any amount erroneously or illegally assessed or collected or any amount in excess of the amount of the tax actually imposed by that section for the month covered by that payment, may claim credit for such overpayment against the amount of the tax imposed by that section which is due upon any other monthly return thereafter made in the same behalf on Form 727 (Revised). Such credit will only be granted, however, if, in making the claim, the instructions printed on the back of that form are carefully followed.

[¶ 360] Art. 40. **Refund of overpayment.**—Any individual, corporation, partnership, or association that has paid to the collector of internal revenue, as a tax under section 500 of the act, any amount erroneously or illegally assessed, or any amount in excess of the amount of the tax actually imposed by that section for the month covered by that payment, or any amount as a penalty

for the collection of which there was no authority, may secure a refund of the amount so overpaid by filing with the collector to whom such payment was made a properly prepared claim on Form 46 (revised).

[¶ 361] Art. 41. **Refund of overcollection.**—Every individual, corporation, partnership, or association that has collected from any person, as a tax under section 500 of the act, any amount in excess of the amount of the tax imposed by that section actually due from such person, shall upon proper application promptly refund such amount to the person entitled thereto, even though such amount has already been paid over to the collector of internal revenue and no corresponding credit (see article 39) or refund (see article 40) has yet been secured. Any person making a refund of any payment upon which tax is collected under this section may repay therewith the amount of the tax collected on such payment.

PENALTIES.

[¶ 362] Art. 42. **Penalties.**—The penalties provided for failure or refusal to perform any of the duties imposed by section 500 (f) and (g) are the same as those provided for failure or refusal to perform the duties imposed by section 500 (a), (b), (c), (d), and (e), as set forth in article 92, Regulations 49.

[¶ 363] (1) Section 502 of the act specifically provides that the taxes under section 500 shall (without assessment by the Commissioner or notice from the collector) be due at the time fixed for filing this return, and if the tax is not paid at such time there shall be added as part of the tax a penalty of 5 per cent, together with interest at the rate of 1 per cent for each full month from the time when the tax becomes due.

[¶ 364] Sec. 1308. (a) That any person required under Titles V. * * * (which includes sections 500, 501, and 502) * * * to pay, or to collect, account for, and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment, or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return, or supply any such information at the time or times required by law or regulation shall, in addition to other penalties provided by law, be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return, or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax, shall be guilty of a misdemeanor, and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes as amended * * *.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership who, as such officer, employee, or member, is under a duty to perform the act in respect of which the violation occurs.

[¶ 365] (3) Section 3176 of the Revised Statutes, as amended, provides that in case of any failure to make and file a return within the prescribed time there shall be added to the tax 25 per cent of its amount.

[¶ 366] (4) Section 3176 of the Revised Statutes, as amended, further provides that in case a false or fraudulent return is willfully made there shall be added to the tax 50 per cent of its amount.

AUTHORITY FOR REGULATIONS.

Section 1309 of Revenue Act of 1918.

[¶ 367] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act.

[¶ 368] **Art. 43. Promulgation of regulations.**—In pursuance of this provision of the act the foregoing regulations are hereby made and promulgated and all rulings inconsistent with them are hereby revoked.

WM. M. WILLIAMS,
Commissioner of Internal Revenue.

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TAX
ON
THE ISSUANCE OF INSURANCE
POLICIES

SECTIONS 503, 504, TITLE V
OF THE REVENUE ACT OF 1918

Law,
Regulations 58 (Revised),
and Treasury Decisions

Indexed

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LAW,
REGULATIONS 58 (REVISED) AND TREASURY DECISIONS
RELATING TO
**TAX ON ISSUANCE OF INSURANCE
POLICIES**

IMPOSITION OF TAX.

[¶ 369]. **Sec. 503.** That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 504 of the Revenue Act of 1917, the following taxes on the issuance of insurance policies, including, in the case of policies issued outside the United States (except those taxable under subdivision 15 of Schedule A of Title XI), their delivery within the United States by any agent or broker, whether acting for the insurer or the insured; such taxes to be paid by the insurer, or by such agent or broker:

[¶ 370] **Article 1. Use of terms.**—When used in these regulations, unless obviously inapplicable, the term “act” means the Revenue Act of 1918; the term “person” includes partnerships, corporations, and association, as well as individuals; the term “insurer” includes any person, partnership, corporation, or association transacting the business of insuring and also any agent or broker; the term “insurance” includes all manner of providing indemnity against risk upon lives or upon property of any description (including rents and profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril; the term “policy of insurance” includes any instrument by whatever name it is called whereby insurance is made or renewed or whereby obligations of the nature of indemnity for loss, damage, or liability are assumed by the insurer, such as binders, open policies, covering notes or policies; the term “premium” means the agreed price for assuming and carrying the risk and represents all that is receivable by the underwriter therefor, whether in one sum or in installments during the life of the policy; the term “United States” means only the States, Territories of Alaska and Hawaii, and the District of Columbia. (See Art. 5 for definition of “delivery.”)

[¶ 371] **Art. 2. Effective date.**—The taxes imposed by section 503 become effective April 1, 1919. All taxes under this section are in lieu of the taxes imposed by section 504 of the Revenue Act of 1917, and attach to all insurance policies issued on and after April 1, 1919, and no tax will be asserted under any prior statute on any policy of insurance issued on and after that date, except that in the case of any tax imposed by any similar provision of the Revenue Act of 1917, such provision shall remain in force until April 1, 1919, the effective date of the new tax, and thereafter for the collection of any tax or penalty due thereunder and unpaid.

[¶ 372] **Art. 3. Premiums charged on policies of insurance issued prior to April 1, 1919.**—In case of an assessment or charge in the nature of a premium, whether the same be the premium originally or additionally assessed or charged, under a policy of insurance issued on or after November 1, 1917, but prior to April 1, 1919, and assessed or charged prior to the latter date but collected subsequent to that date, it shall be held to be a premium that accrued prior to April 1, 1919, and the tax shall be due thereon as of the issuance of the policy of insurance under the Revenue Act of 1917.

[¶ 373] **Art. 4. Basis of tax.**—The tax is upon the “issuance of insurance policies.” An insurance policy is issued when it has become a binding and effective contract against the insurer. The insurance policy may consist of any contract whereby insurance is made or renewed or whereby obligations of the nature of indemnity for loss, damage, or liability are assumed by the insurer.

[§ 374] Art. 5. **Policies issued outside of United States.**—Policies issued outside of the United States, but not subject to the stamp tax, are taxed under section 503 of the act, upon their delivery within the United States by any agent or broker, whether acting for the insurer or the insured. (See Art. 6 for policies subject to the stamp tax.) “Delivery” is held to mean any actual or physical delivery of the policy of insurance or any action or proceeding which is sufficient to effect a binding contract whereby insurance is made or renewed or whereby obligations in the nature of indemnity for loss, damage, or liability are assumed. It is not essential that delivery of a policy be made to the insured. If, by agreement or understanding, the agent of the insurer or any other person is allowed to retain the policy which has been issued, such holder of the policy will be regarded as holding the same for the insured and delivery will be considered as complete.

INSURANCE SUBJECT TO STAMP TAX.

[§ 375] Title XI, Schedule A 15: On each policy of insurance, or certificate, binder, covering note, memorandum, cablegram, letter, or other instrument by whatever name called whereby insurance is made or renewed upon property within the United States (including rents and profits) against peril by sea or on inland waters or in transit on land (including transshipments and storage at termini or way points) or by fire, lightning, tornado, windstorm, bombardment, invasion, insurrection, or riot, issued to or for or in the name of a domestic corporation or partnership or an individual resident of the United States by any foreign corporation or partnership or any individual not a resident of the United States, when such policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or district of the United States within which such insurer is authorized to do business, a tax of 3 cents on each dollar, or fractional part thereof, of the premium charged: Provided, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

[§ 376] Art. 6. **When insurance subject to stamp tax.**—Any policy or other instrument, issued by any foreign corporation or partnership or nonresident individual, making or renewing insurance upon property (including rents and profits) within the United States covering certain risks enumerated in the statute, is subject to the stamp tax if issued to or for or in the name of a domestic corporation or partnership or an individual resident of the United States, unless signed or countersigned by an officer or agent of the insurer in a State, Territory, or district of the United States within which such insurer is authorized to do business. Such policy is subject to the tax only if it insures against peril by sea or on inland waters, or in transit on land (including transshipments and storage at termini or way points), or by fire, lightning, tornado, windstorm, bombardment, invasion, insurrection, or riot. It is subject to tax whether issued within or without the United States. If issued by a nonresident individual it is subject to the tax whether the insurer is a citizen or an alien; and if issued by a foreign insurer to, for, or in the name of an individual resident of the United States, whether the insured is a citizen or an alien. If signed or countersigned by an officer or agent in a State, Territory, or district of the United States in which the insurer is authorized to do business, such policy is not subject to the stamp tax whether or not the insured is domiciled in such State, Territory, or district. The tax imposed by section 503 and the stamp tax imposed by subdivision 15 of Schedule A of Title XI of the act are distinct from each other, but no policy is subject to both taxes. The stamp tax is not imposed on any policy of life or other non-property insurance (which is taxable under the provisions of section 503), and is not imposed on any policy of reinsurance. Specific provisions for the administration of the stamp tax on foreign insurance are contained in Regulations 55 (Revised), articles 156-169, inclusive.

[§ 377] Art. 7. **Residence of insured.**—The tax imposed by section 503 is upon policies issued within the United States, irrespective of the residence of

the insured in either the United States or in a foreign country. The stamp tax imposed by Title XI, Schedule A-15, is upon policies issued either within the United States or abroad by a foreign corporation or partnership or nonresident individual in favor of a domestic corporation or partnership or a resident, and not signed or countersigned by a resident officer or agent of the insurer as provided in the act. See Regulations 55 (Revised), articles 156-169, inclusive.

[¶ 378] Art. 8. **Who is liable for the tax.**—The insurer, and not the insured (or broker who places a risk for a client with an insurer), is liable for the payment of the tax imposed by section 503; but in the case of policies issued outside the United States (except those taxable under subdivision 15 of schedule A of Title XI) and delivered within the United States by any agent or broker, whether acting for the insurer or the insured, the insurer, or agent, or broker is liable for the payment of the tax. See article 5 for definition of "delivery." Any agent or broker through whom insurance is placed with a foreign insurance company becomes liable to the tax upon the making of the contract of insurance, whether notification is made by him to the insured or by the foreign insurance company directly. In the case of policies taxable under subdivision 15 of schedule A of Title XI, both the insurer or agent or broker and the insured are responsible to the Government for affixing and canceling stamps in the required amount. See Regulations 55 (Revised), article 171.

LIFE INSURANCE.

[¶ 379] (a) **Life insurance:** A tax equivalent to 8 cents on each \$100 or fractional part thereof of the amount for which any life is insured under any policy of insurance, or other instrument, by whatever name the same is called: Provided, That on all policies for life insurance only by which a life is insured not in excess of \$500, issued on the industrial or weekly or monthly payment plan of insurance, the tax shall be 40 per centum of the amount of the first weekly premium, or 20 per centum of the amount of the first monthly premium, as the case may be: Provided further, That on policies of group life insurance, covering groups of not less than 25 lives in the employ of the same person, for the benefit of persons other than the employer, the tax shall be equivalent to 4 cents on each \$100 of the aggregate amount for which the group policy is issued and of any net increase in the amount of the insurance under such policy: And provided further, That on all policies covering life, health, and accident insurance combined in one policy by which a life is insured not in excess of \$500, issued on the industrial or weekly or monthly payment plan of insurance, the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be;

[¶ 380] Art. 9. **Computation of tax.**—The tax is equivalent to 8 cents on each \$100 or fractional part thereof of the amount for which any life is insured under any policy of insurance. The amount for which any life is insured, except in the case of group insurance, is the amount to be paid in case of death at any time for any ordinary cause regardless of special contingencies.

[¶ 381] Art. 10. **Insurance issued in compliance with privilege of conversion.**—A certificate or other instrument, by whatever name the same is called, issued to a policy holder evidencing additional insurance which he is entitled to under an option in the policy of insurance which is taken instead of a cash dividend is not a policy of insurance or other instrument that is taxable within the meaning of this section.

[¶ 382] Art. 11. **Industrial or weekly or monthly payment plan.**—Life insurance by which a life is insured not in excess of \$500, on the industrial or weekly or monthly payment plan of insurance is taxable upon the issuance of policies, and the tax is measured by the first weekly or monthly premium charged on all such policies of insurance and is 40 per centum of the first weekly premium or 20 per centum of the first monthly premium, as the case may be. Where the policy upon the industrial plan of payment exceeds \$500

the tax is 8 cents on each \$100 or fractional part thereof the amount for which the life is insured.

[¶ 383] **Art. 12. Group life insurance.**—In the case of group life insurance, covering groups of not less than 25 lives in the employ of the same person, for the benefit of persons other than the employer, the tax is imposed upon the issuance of each policy of insurance and is measured by the aggregate amount for which the group policy is issued and any net increase in the amount of the insurance under such policy being equivalent to 4 cents on each \$100 thereof; that is to say, the measure of tax is, first, the aggregate amount for which the group policy is issued and, second, any net increase in the amount of the insurance under such policy. The words “net increase” shall, for the purposes of the tax, be held to mean any subsequent net increase in the amount of insurance for which the group policy is issued; for instance, if the amount for which the group policy is issued suffers a net increase in the amount of insurance covered thereby, the sum of such net increase and the amount for which the policy was originally issued shall be the basis for the purpose of measuring the tax under such policy, and if such policy shall again suffer a net increase beyond the amount last established, such new net increase shall be the measure of additional tax; but no refund of tax will be allowed for any decrease from any net increase or the amount of insurance provided for under such a policy of insurance; the “amount for which any life is insured” in the case of group insurance is the aggregate amount for which the policy is issued whether such amount be named in the policy or some other instrument having reference to the policy or supplemental thereto.

[¶ 384] **Art. 13. Life, health, and accident insurance.**—In the case of life, health, and accident insurance combined in one policy by which a life is insured not in excess of \$500, on the industrial or weekly or monthly payment plan of insurance, the tax is imposed upon the issuance of all policies of either plan and is measured by the first weekly or monthly premium charged on all such policies of insurance in an amount equivalent to 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be. Combined policies of life, health, and accident insurance, in an amount in excess of \$500, are taxable (a) as separate contracts if the premium charged is expressly apportioned and (b) as both casualty policies and life policies if the premium charged is greater than for either kind of insurance separately and is not apportioned.

MARINE, INLAND, AND FIRE INSURANCE.

[¶ 385] (b) **Marine, inland, and fire insurance:** A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril;

[¶ 386] **Art. 14. Computation of tax.**—In the case of marine, inland, and fire insurance the tax is imposed upon the issuance of each policy of insurance and is measured by the premium charged under each policy of insurance, and is equivalent to 1 cent on each \$1 or fractional part thereof of the premium charged, and of any additional assessment or charge in the nature of a premium upon insurance made or renewed; for example, upon a premium charge of \$10.10 the tax imposed is 11 cents, being 1 cent for each dollar and 1 cent for the fractional part of a dollar. The tax attaches to the full amount of the premium charged even though at a later date a portion of the amount may be returned to the insured as a dividend or other net saving of premium. A note given to a mutual insurance company to cover the maximum liability of the insured, not in payment of premiums or assessments but as a form of security

for the payment of assessments as they are made, the exact amount of the premium to carry the insurance not being definitely known, should not be the basis of assessment of the tax, but the tax should in such a case be computed upon the amount of the assessments as they are made. Where mutual or co-operative companies require from policyholders upon the issuance of policies (a) so-called premium deposits largely in excess of the estimated cost of the insurance and refund the excess over the actual cost upon the expiration of the policy of insurance, or (b) notes evidencing the estimate of the policyholder's liability and also a cash percentage of the notes representing as nearly as may be the cost of the insurance, the tax should originally be paid upon the estimated premium on each policy computed on an experience basis subject to final adjustment of the tax by debit or credit, as the case may be, in the return for the month when the premium is determined.

[¶ 387] Art. 15. **Premium charged.**—(a) The premium charged is the total premium payable during the life of the contract of insurance and includes any additional assessments or charges in the nature of a premium which may be assessed or charged during the life of the contract of insurance whether payable in one sum or in installments and however paid.

(b) Where, as a result of a mistake of fact, the premium paid for the issuance of a policy of insurance is in excess of the premium due upon such policy and the excess premium is returned to the policyholder, the tax paid on account of such excess premium may be deducted on the return for the month in which the rebate is made.

(c) Where a policy of insurance is canceled and as a result a portion of the premium paid thereon is, in accordance with a requirement of law, returned to the policyholder, the tax paid upon the portion of the premium so returned may be deducted on the return for the month in which the repayment of premium is made.

[¶ 388] Art. 16. **Binders.**—On binders or other instruments issued without a definite agreement as to the premium to be charged the tax attaches when the amount of the premium is determined. If the premium is charged at the time the binder is issued the tax immediately attaches; and if the binder is divided into a number of different policies, issued by separate insurers as direct insurance, each insurer must make return with respect to the proportion of the premium charged by it.

[¶ 389] Art. 17. **Insurance on commodities exported.**—No tax is imposed upon the premium charged for insurance issued to cover commodities which are in the actual process of exportation and which have begun their voyage or preparation for the voyage from the United States. If a policy of insurance or other instrument is issued covering both export and nonexport property, the tax will be computed upon the full amount of the premium charged, unless such instrument clearly indicates the property for export and the premium charged for the insurance thereon.

CASUALTY INSURANCE.

[¶ 390] (c) **Casualty insurance:** A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage, or liability (except bonds and policies taxable under subdivision 2 of schedule A of Title XI) issued or executed or renewed by any person transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): **Provided,** That in case of policies of insurance issued on the industrial or weekly or monthly payment plan the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be;

[¶ 391] Art. 18. Scope of tax.—For the purpose of the tax casualty insurance includes every policy of insurance or obligation of the nature of indemnity for loss, damage, or liability issued or executed or renewed by any person transacting any kind of insurance except life insurance and insurance described and taxed in the preceding subdivision, and except bonds and policies taxable under subdivision (2) of schedule A of Title XI. The subdivision (2) of schedule A referred to reads as follows:

[¶ 392] Bonds, indemnity and surety: On all bonds executed for indemnifying any person who shall have become bound or engaged as surety, and on all bonds executed for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and on all policies of guaranty and fidelity insurance, including policies guaranteeing titles to real estate and mortgage guarantee policies, and on all other bonds of any description, made, issued, or executed, not otherwise provided for in this schedule, except such as may be required in legal proceedings, 50 cents: **Provided,** That where a premium is charged for the issuance, execution, renewal or continuance of such bond the tax shall be 1 cent on each dollar or fractional part thereof of the premium charged: **Provided further,** That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

See Regulations 55 regarding stamp taxes imposed by Title XI.

[¶ 393] Art. 19. Computation of tax.—(a) In the case of policies issued under paragraph (c) the tax imposed upon the issuance of each policy of insurance is measured by the premium charged and is equivalent to 1 cent on each dollar or fractional part thereof of the premium charged or of any additional assessment or premium charge upon any policy of insurance.

(b) The "policy fee" charged on a policy of health insurance issued for annual premium, payable quarterly, semiannually, or annually, is a part of the premium charged for the purpose of computing the tax on the policy.

[¶ 394] Art. 20. Industrial or weekly or monthly payment plan.—(a) In the case of casualty insurance on the industrial or weekly or monthly payment plan the tax is imposed upon the issuance of all policies under either plan and is measured by the first weekly or monthly premium charged on all such policies of insurance in an amount equivalent to 40 per centum of the amount of the first weekly premium, or 20 per centum of the amount of the first monthly premium, as the case may be.

(b) In calculating the tax under the proviso of section (c) on casualty insurance policies issued on the weekly or monthly payment plan only the regular weekly or monthly premium is to be included. The "policy fee," if any, is not to be included.

EXEMPTIONS.

[¶ 395] (d) Policies issued by any corporation enumerated in section 231, and policies of reinsurance, shall be exempt from the taxes imposed by this section.

[¶ 396] Art. 21. Insurers exempt from tax.—Insurers exempt from income tax under section 231 of the act are also exempt from the payment of the excise tax upon the issuance of insurance policies imposed by section 503. Policies of insurance issued by farmers' or other mutual hail, cyclone, or fire insurance companies or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses are not subject to the excise tax. Where a farmers' or other mutual hail, cyclone, or fire insurance company, or like organization of a purely local character, has income from investments in bonds, mortgages, etc., it is not exempt from income tax and accordingly is not exempt from the excise tax imposed by section 503. The phrase "of a purely local character" qualifies only "like organizations." A fraternal beneficiary society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other

benefits to the members of such society, order, or association or their dependents is exempt from income tax and also from the excise tax.

[¶ 397] Art. 22. **Reinsurance.**—The tax does not attach on amounts charged as premiums on policies of reinsurance. When an insurer reinsures the risk of another insurer the transaction is termed reinsurance and is not taxable.

[¶ 398] Art. 23. **War Risk Insurance Bureau.**—The tax imposed by section 503 of the act does not apply to soldiers' and sailors' insurance written by the War Risk Insurance Bureau.

RETURN AND PAYMENT OF TAX.

[¶ 399] Sec. 504. That every person issuing policies of insurance upon the issuance of which a tax is imposed by section 503 shall make monthly returns under oath, in duplicate, and pay such tax to the collector of the district in which the principal office or place of business of such person is located. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 400] Sec. 1309. That the Commissioner, with the approval of the Secretary, * * * may by regulation provide that any return required by Titles V, * * * to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledge before two witnesses instead of under oath.

[¶ 401] Art. 24. **Monthly returns.**—Any insurer, agent, or broker, liable for the tax imposed by section 503 of the act must make return each month, and under oath (unless the amount of the tax covered thereby is not in excess of \$10, in which case the return may be signed or acknowledged before two witnesses instead of under oath), to the collector of internal revenue for the district in which the principal place of business of said insurer, agent, or broker is located; except that in the case of insurers having more than one department and located in different collection districts each department will be permitted to make return for the business transacted by it to the collector of the district in which the department is located; but it is desirable to prevent multiplicity of reports so far as possible.

[¶ 402] Art. 25. **Date when due.**—The amount of tax is to be computed upon the premiums charged under each policy, the reports of which were received by the insurer at its principal place of business (or at the place of business of the department of the insurer making a separate return to the collector for the district wherein such department is located), during the month for which the return is made; and the return for each month is to be rendered and the tax paid on or before the last day of the succeeding month covering taxes accruing during the preceding month. It is not necessary to delay a return until all the policies issued during the month have been entered upon the books of the insurer, but the insurer's records should disclose policies reported whereon premiums have been charged to the last day of the month for which the return is made.

[¶ 403] Art. 26. **Forms.**—The return is to be made on Form 730 (revised) and blank forms for making return may be had upon application to the commissioner or to the collector of internal revenue of any district.

[¶ 404] Art. 27. **Taxpayer's records.**—Only the gross tax returnable, the total credits, and the net amount of tax payable should be entered in the return. It is not necessary to show the name and address of each person to whom a policy is issued, nor is it necessary to submit a list of all cancellations, returned premiums, or overpayments for which credit is claimed on the return;

but each insurer must keep his records and accounts in such manner as to afford an easy method of examination and verification of the correctness of each return as made.

[¶ 405] Art. 28. **Payment of tax.**—The remittance of the amount of the tax must accompany the return as and when made.

CREDITS AND REFUNDS.

[¶ 406] Sec. 1310. (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

[¶ 407] Art. 29. **Credit for overpayment.**—A taxpayer may take credit in a subsequent month's return for any overpayment of tax for a prior month. Where a policy has been issued upon which there was charged an amount of premium which is afterwards determined to have been incorrect, and refund is made of the amount of the excess premium paid, the taxpayer may deduct from the tax return of a subsequent month the amount of tax previously paid upon the portion of the premium so returned. Where a policy of insurance has been issued and tax paid upon the premium charged and such policy is, according to law or the term of the contract of insurance, afterwards canceled and the unearned portion of the premium charged is returned to the insured, the taxpayer may deduct from the tax return of a subsequent month the amount of tax previously paid upon the portion of the premium so returned. If a policy of insurance issued prior to April 1, 1919, and thus taxed under section 504 of the Revenue Act of 1917, is canceled on or after that date, credit may be taken in the same manner as though the policy of insurance had been issued on or after April 1, 1919. But any other claim for refund of tax paid under the 1917 Act will continue to be made on Form 46. In case an error or omission is discovered in any prior month's return, the amount of the tax found to be due because of such error or omission shall be included in the return for the month in which the discovery of error or omission is made. Reinsurance premiums are not subject to the tax, and return payment premiums or cancellations on same are not to be considered as credits.

EXTENSION OF EXISTING STATUTES.

Subdivision (b) of Section 1400 of Title XIV.—General Provisions of the Act read as follows:

[¶ 408] Sec. 1400 (b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes * * * * *. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

[¶ 409] Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering

the return of or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 410] Art. 30. **Requiring taxpayer to keep records, etc.**—In collecting the tax the commissioner has the benefit of all existing internal-revenue laws. In aid of the enforcement of the statute the commissioner may require any person subject to the tax to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed.

MEDIUM OF PAYMENT OF TAX.

[¶ 411] Sec. 1314. That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[¶ 412] Art. 31. **Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of taxes, provided such checks are collectible at par: that is, for their full amount without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words "This check is in payment of an obligation to the United States and must be paid at par, no protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instrument included in the same letter of transmittal; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

[¶ 413] Art. 32. **Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the revised statutes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the act of March 2, 1911.

PENALTIES.

[¶ 414] Sec. 504. * * * The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

Section 3176 of the United States Revised Statutes, as amended by Section 1317 of the Revenue Act of 1918.

[¶ 415] * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

[¶ 416] Sec. 1308. (a) That any person required under Titles V, VI, VII, VIII, IX, X, or XII, to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purpose of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: **Provided, however,** That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or of section 605 or 620 of this Act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the Act in respect of which the violation occurs.

AUTHORITY FOR REGULATIONS.

[¶ 417] Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

[¶ 418] Art. 33. **Promulgation of Regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated, and all rulings inconsistent herewith are hereby revoked.

PAUL F. MYERS,
Acting Commissioner of Internal Revenue.

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TAX
ON
ALCOHOLIC
BEVERAGES

SECTIONS 600 TO 628 OF TITLE
VI OF REVENUE ACT OF 1918

Statute only. Not Regulations
nor Treasury Decisions

201

1911-12
1912-13

1913-14
1914-15

LAW,
COMPRISING SECTIONS 600 to 628
OF TITLE VI. OF REVENUE ACT OF 1918
RELATING TO

TAX ON ALCOHOLIC BEVERAGES

[§ 419] Section 600. (a) That there shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section 604, in lieu of the internal-revenue taxes now imposed thereon by law, a tax of \$2.20 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$6.40) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

[§ 420] (b) That the tax imposed by subdivision (a) on distilled spirits intended for beverage purposes shall not be due or payable on such spirits while stored in any distillery, bonded warehouse, or special or general bonded warehouse, and which, pursuant to any Act of Congress or proclamation of the President of the United States, can not be lawfully sold or removed from any such warehouse during the period of prohibition fixed by such Act or proclamation; and all warehousing bonds or transportation and warehousing bonds conditioned for the payment of tax on any such spirits so stored on the date such prohibition takes effect shall as to all such spirits actually so stored be canceled and discharged, provided the distiller of such spirits shall in lieu of such bonds and prior to their cancellation execute a bond in a penal sum of not less than \$10,000, with sureties satisfactory to the collector of the district, conditioned that the principal shall, during the period of such prohibition, safely keep or cause to be kept in good condition all such spirits and the warehouse in which the same are stored, and shall not remove or suffer to be removed from warehouse, contrary to law, any such spirits during the period of such prohibition; and the bond herein prescribed shall be in such further sum and shall contain such further conditions as the Commissioner, with the approval of the Secretary, may by regulations require. The distiller may, subject to the provisions of this section, be permitted to retain in any such bonded warehouse distilled spirits on which, under the terms of any existing bond, the tax imposed thereon becomes due and payable prior to the date such prohibition takes effect: Provided, That on the removal of such prohibition the distiller shall, as to all spirits as to which the bonded period fixed by law has not expired and which remain stored in warehouse, execute new and satisfactory bond in the form required by existing law, conditioned for the payment of the tax on all such spirits; and all provisions of existing law relating to such bonded warehouses or the storage of spirits therein, or to the execution of new or additional bonds, so far as applicable, shall continue in force as to all distilled spirits rebonded under the provisions of this section.

[§ 421] Upon the withdrawal of distilled spirits from bonded warehouse, after the period of prohibition has ended, and under the conditions imposed by section 50 of an Act entitled "An Act to reduce taxation, to provide revenue for the support of the Government, and for other purposes," approved August 28, 1894, an allowance for loss by leakage or other unavoidable cause, not exceeding one proof gallon as to packages of a capacity of not less than 40 wine gallons, may be made in addition to that provided in said section 50, as amended; and a like additional allowance of one proof gallon as to each pack-

age withdrawn may be made for each period of four months, or fraction thereof, for such spirits as shall have remained in warehouse during the period of prohibition and after the expiration of the maximum leakage period fixed by that section.

[¶ 422] Under regulations prescribed by the Secretary, any imported distilled spirits, wines or other liquors which may be in any customs bonded warehouse under the customs laws on the date such prohibition takes effect shall be permitted to remain therein without payment of any taxes or duties thereon, beyond the three-year period provided in section 2971 of the Revised Statutes, during such period of prohibition; and may be exported at any time during such extended period. Any imported spirits, wines or other liquors as to which the three-year bonded period may expire after the passage of this Act and prior to the date such prohibition takes effect may at the option of the owner remain in bond during such period of prohibition.

[¶ 423] (c) In lieu of the internal-revenue tax now imposed thereon by law there shall be levied and collected upon all perfumes hereafter imported into the United States containing distilled spirits, a tax of \$1.10 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal-revenue collections, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

[¶ 424] **Sec. 601.** That no distilled spirits produced after October 3, 1917, shall be imported into the United States from any foreign country, or from the Virgin Islands (unless produced from products the growth of such islands, and not then into any State or Territory or District of the United States in which the manufacture or sale of intoxicating liquor is prohibited), or from Porto Rico, or the Philippine Islands. Under such rules, regulations, and bonds as the Secretary may prescribe, the provisions of this section shall not apply to distilled spirits imported for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage.

[¶ 425] **Sec. 602.** That at registered distilleries producing alcohol, or other high-proof spirits, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cisterns and tax paid without being entered into bonded warehouse. Such spirits may be also transferred from the receiving cisterns at such distilleries, by means of pipe lines, direct to storage tanks in the bonded warehouse and may be warehoused in such storage tanks. Such spirits may be also transferred in tanks or tank cars to general bonded warehouses for storage therein, either in storage tanks in such warehouses or in the tanks in which they were transferred. Such spirits may also be transferred from receiving cisterns or warehouse storage tanks to barrels, drums, tanks, tank cars, or other approved containers, and may be transported in such containers for exportation or other lawful purposes. The Commissioner, with the approval of the Secretary, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gauging, storing, and transporting of such spirits; the records to be kept and returns to be made; the size and kind of packages and tanks to be used; the marking, branding, numbering, and stamping of such packages and tanks; the kinds of stamps, if any, to be used; and the time and manner of paying the tax; the kind of bond and the penal sum of same. The tax prescribed by law must be paid before such spirits are removed from the distillery premises, or from general bonded warehouse in the case of spirits transferred thereto, except as otherwise provided by law.

[¶ 426] Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, distilled spirits may hereafter be drawn from receiving cisterns and deposited in distillery warehouses without having affixed to the packages containing the same, distillery warehouse stamps, and such packages, when so deposited in warehouse, may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit.

[¶ 427] Under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the manufacture, warehousing, withdrawal, and shipment, under the provisions of existing law of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section 3283 of the Revised Statutes.

[¶ 428] The Commissioner, with the approval of the Secretary, may by regulations exempt distillers of ethyl alcohol, for use in the production of munitions of war, or for other non-beverage purposes, from so much of the provisions of sections 3264, 3285, or 3309 of the Revised Statutes, and Acts amendatory thereof, respecting the survey of distilleries, the period of fermentation, the filling and emptying of fermenting tubs, and assessments, as, in his judgment, may be expedient: Provided, That the bond prescribed in section 3260 of the Revised Statutes shall, in the cases herein provided, be in such sum and contain such further conditions as the Commissioner may require.

[¶ 429] **Sec. 603.** That under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, ethyl alcohol of not less than 180 degrees proof, produced at any central distilling and denaturing plant established under the provisions of subsection 2, paragraph N, of section IV of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, may be removed from such plant to any central denaturing bonded warehouse for denaturation, or may, before or after denaturation, be removed from such plant or from such denaturing bonded warehouse, free of tax, for use of the United States or for shipment to any nation while engaged against the German Government in the present war and the removal herein authorized may be made in such tank vessels, tank cars, drums, casks, or other containers as may be approved by the Commissioner. It shall be lawful, under regulations prescribed by the Commissioner, with the approval of the Secretary, for an allowance to be made for leakage or loss by unavoidable accident and without fault or negligence of the distiller, owner, carrier, or his agents or employees, which may occur during the transportation of such spirits or while the same are lawfully stored on either of the premises herein described.

[¶ 430] **Sec. 604.** That upon all distilled spirits produced in or imported into the United States upon which the internal-revenue tax now imposed by law has been paid, and which, on the day after the passage of this Act, are held by any person and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor tax of \$3.20 (if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon.

[¶ 431] **Sec. 605.** That in addition to the tax imposed by this Act on distilled spirits and wines, there shall be levied, assessed, collected and paid, in lieu of the tax imposed by section 304 of the Revenue Act of 1917, a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter

rectified, purified, or refined in such manner, and in all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3244 of the Revised Statutes, as amended: Provided, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

[¶ 432] Upon all such articles heretofore produced, and which on the day after passage of this Act are held by any person and intended for sale, there shall be levied, assessed, collected, and paid a floor tax of 15 cents on each proof gallon, and a proportionate tax at a like rate on all fractional parts of each proof gallon; and all such distilled spirits so held and not contained in the distillers' original stamped packages, or in bottles or other containers bearing the distillers' original labels, shall for the purpose of this section be regarded as rectified spirits.

[¶ 433] When the process of rectification is completed and the taxes prescribed by this section have been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the taxes have theretofore been paid.

[¶ 434] The taxes imposed by this section shall not attach to cordials or liqueurs on which a tax is imposed and paid under section 611 or 613, nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof: Provided, That such blended whiskies shall be exempt from tax under this section only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner, with the approval of the Secretary, may prescribe.

[¶ 435] All distilled spirits or wines taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, branding, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

[¶ 436] The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner, with the approval of the Secretary.

[¶ 437] Whoever violates any of the provisions of this section shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned not more than two years, and shall, in addition, be liable to double the tax evaded, together with the tax, to be collected by assessment or on any bond given.

[¶ 438] **Sec. 606.** That hereafter collectors shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

[¶ 439] The Commissioner, with the approval of the Secretary, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby:

[¶ 440] Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer

brandy, export tobacco, export cigars, export oleomargarine, and export fermented-liquor stamps.

[¶ 441] **Sec. 607.** That the Commissioner, with the approval of the Secretary, is hereby authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such apparatus when so required by the Commissioner shall not be permitted to conduct business on such premises.

[¶ 442] **Sec. 608.** That there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of one per centum, or more, of alcohol, brewed or manufactured and hereafter sold, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in lieu of the internal-revenue taxes now imposed thereon by law, a tax of \$6.00 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law, to be collected under the provisions of existing law.

[¶ 443] **Sec. 609.** That from and after the passage of this Act taxable fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial distillery of either class established under the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, to be used as distilling material, and the residue from such distillation, containing less than one-half of 1 per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

[¶ 444] The removal of the taxable fermented liquor from the brewery to the distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner shall deem proper, and the Commissioner, with the approval of the Secretary, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue.

[¶ 445] **Sec. 610.** That natural wine within the meaning of this Act shall be deemed to be the product made from the normal alcoholic fermentation of the juice of sound, ripe grapes, without addition or abstraction, except such as may occur in the usual cellar treatment of clarifying and aging: Provided, however, That the product made from the juice of sound, ripe grapes by complete fermentation of the must under proper cellar treatment and corrected by the addition (under the supervision of a gauger or storekeeper-gauger in the capacity of gauger) of a solution of water and pure cane, beet, or dextrose sugar (containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis) to the must or to the wine, to correct natural deficiencies, when such addition shall not increase the volume of the resultant product more than 35 per centum, and the resultant product does not contain less than five parts per thousand of acid before fermentation and not more than 13 per centum of alcohol after complete fermentation, shall be deemed to be wine within the meaning of this Act, and may be labeled, transported, and sold as "wine," qualified by the name of the locality where produced, and may be further qualified by the name of its own particular type or variety: And provided further, That wine as defined in this section may be

sweetened with cane sugar or beet sugar or pure condensed grape must and fortified under the provisions of this Act, and wines so sweetened or fortified shall be considered sweet wine within the meaning of this Act.

[¶ 446] **Sec. 611.** That upon all still wines, including vermouth, and all artificial or imitation wines or compounds sold as still wine, which are hereafter produced in or imported into the United States, or which on the day after the passage of this Act are on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid, in lieu of the inter-revenue taxes now imposed thereon by law, taxes at rates as follows, when sold, or removed for consumption or sale:

[¶ 447] On wines containing not more than 14 per centum of absolute alcohol, 16 cents per wine gallon, the per centum of alcohol taxable under this section to be reckoned by volume and not by weight;

On wines containing more than 14 per centum and not exceeding 21 per centum of absolute alcohol, 40 cents per wine gallon;

On wines containing more than 21 per centum and not exceeding 24 per centum of absolute alcohol, \$1 per wine gallon;

All such wines containing more than 24 per centum of absolute alcohol by volume shall be classed as distilled spirits and shall pay tax accordingly.

[¶ 448] **Sec. 612.** That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary, may prescribe, any producer of wines defined under the provisions of this title, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made: Provided, That there shall be levied and assessed against the producer of such wines a tax (in lieu of the internal-revenue tax now imposed thereon by law) of 60 cents per proof gallon of grape brandy or wine spirits whenever withdrawn and hereafter so used by him in the fortification of such wines during the preceding month, which assessment shall be paid by him within ten months from the date of notice thereof: Provided further, That nothing contained in this section shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this title.

[¶ 449] **Sec. 613.** That upon the following articles which are hereafter produced in or imported into the United States, or which on the day after the passage of this Act are on any winery premises or other bonded premises or in transit thereto or at any customhouse, there shall be levied, collected, and paid taxes at rates as follows, when sold, or removed for consumption or sale:

[¶ 450] On each bottle or other container of champagne or sparkling wine, 12 cents on each one-half pint or fraction thereof;

On each bottle or other container of artificially carbonated wine, 6 cents on each one-half pint or fraction thereof;

On each bottle or other container of liqueurs, cordials, or similar compounds, by whatever name sold or offered for sale, containing sweet wine fortified with grape brandy, 6 cents on each one-half pint or fraction thereof.

The tax imposed by this section shall, in the case of any article upon which a corresponding internal-revenue tax is now imposed by law, be in lieu of such tax.

[¶ 451] **Sec. 614.** That upon all articles specified in section 611 or 613 upon which the internal-revenue tax now imposed by law has been paid and which are on the day after the passage of this Act held by any person and intended for sale, there shall be levied, collected, and paid a floor tax equal to the difference between the tax imposed by this Act and the tax so paid.

[¶ 452] **Sec. 615.** That upon all sweet wines held for sale by the producer thereof upon the day after the passage of this Act there shall be levied, assessed, collected, and paid a floor tax equivalent to 30 cents per proof gallon upon the grape brandy or wine spirits used in the fortification of such wine.

[¶ 453] **Sec. 616.** That the taxes imposed by section 611 or 613 shall be paid by stamp on removal of the wines from the customhouse, winery, or other bonded place of storage for consumption or sale, and every person hereafter producing, or having in his possession or under his control when this title takes effect, any wines subject to the tax imposed in section 611 or 613 shall file such notice, describing the premises on which such wines are produced or stored; shall execute a bond in such form; shall make such inventories under oath; and shall, prior to sale or removal for consumption, affix to each cask or vessel containing such wine such marks, labels, or stamps as the Commissioner, with the approval of the Secretary, may from time to time prescribe; and the premises described in such notice shall, for the purpose of this Act, be regarded as bonded premises. But the provisions of this section, except as to payment of tax and the affixing of the required stamps or labels, shall not apply to wines held by retail dealers, as defined in section 3244 of the Revised Statutes, nor, subject to regulations prescribed by the Commissioner, with the approval of the Secretary, shall the tax imposed by section 611 apply to wines produced for the family use of the duly registered producer thereof and not sold or otherwise removed from the place of manufacture and not exceeding in any case two hundred gallons per year.

[¶ 454] **Sec. 617.** That sections 42, 43, and 45 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, as amended by section 68 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government and for other purposes," approved August 27, 1894, are further amended to read as follows:

[¶ 455] "**Sec. 42.** That any producer of pure sweet wines may use in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, wine spirits produced by any duly authorized distiller, and the Commissioner of Internal Revenue, in determining the liability of any distiller of wine spirits to assessment under section 3309 of the Revised Statutes, is authorized to allow such distiller credit in his computations for the wine spirits withdrawn to be used in fortifying sweet wines under this Act.

[¶ 456] "**Sec. 43.** That the wine spirits mentioned in section 42 is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues commonly known as grape brandy, and shall include commercial grape brandy which may have been colored with burnt sugar or caramel; and the pure sweet wine which may be fortified with wine spirits under the provisions of this Act is fermented or partially fermented grape juice only, with the usual cellar treatment, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided: Provided, That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar, or pure dextrose sugar containing, respectively, not less than 95 per centum of actual sugar, calculated on a dry basis, or water, or any or all of them, to the pure grape juice before fermentation, or to the fermented product

of such grape juice, or to both, prior to the fortification herein provided for, either for the purpose of perfecting sweet wines according to commercial standards or for mechanical purposes, shall not be excluded by the definition of pure sweet wine aforesaid: Provided, however, That the cane or beet sugar, or pure dextrose sugar added for sweetening purposes shall not be in excess of 11 per centum of the weight of the wine to be fortified: And provided further, That the addition of water herein authorized shall be under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe: Provided, however, That records kept in accordance with such regulations as to the percentage of saccharine, acid, alcoholic, and added water content of the wine offered for fortification shall be open to inspection by any official of the Department of Agriculture thereto duly authorized by the Secretary of Agriculture; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act, where the same, after fermentation and before fortification, have an alcoholic strength of less than 5 per centum of their volume.

[¶ 457] **“Sec. 45.** That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this Act may withdraw wine spirits from any special bonded warehouse in original packages or from any registered distillery in any quantity not less than eighty wine gallons, and may use so much of the same as may be required by him under such regulations, and after the filing of such notices and bonds and the keeping of such records and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the foregoing limitations and provisions; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized whenever he shall deem it to be necessary for the prevention of violations of this law to prescribe that wine spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by this regulation shall be stored in any room or part of the building in which fortification of wines is practiced. The use of wine spirits for the fortification of sweet wines under this Act shall be under the immediate supervision of any officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines.”

[¶ 458] **Sec. 618.** (a) That under such regulations and upon the execution of such notices, entries, bonds, and other security as the Commissioner, with the approval of the Secretary of the Treasury, may prescribe, domestic wines subject to the tax imposed by section 611 may be removed from the winery where produced, free of tax, for storage on other bonded premises or from such premises

to other bonded premises (but not more than one such additional removal shall be allowed), or for exportation from the United States or for use as distilling material at any regularly registered distillery: Provided, however, That the distiller using any such wine as material shall, subject to the provisions of section 3309 of the Revised Statutes, as amended, be held to pay the tax on the product of such wines as will include both the alcoholic strength therein produced by fermentation and that obtained from the brandy or wine spirits added to such wines at the time of fortification.

[¶ 459] (b) Under regulations prescribed by the Commissioner with the approval of the Secretary, it shall be lawful to produce grape wines on bonded winery premises by the usual method, and to transport and use the same, and like wines heretofore produced and now stored on bonded winery premises, as distilling material for the production of nonbeverage spirits in the production of nonalcoholic wines, containing less than $\frac{1}{2}$ of 1 per centum of alcohol by volume, in any fruit brandy or industrial distillery: Provided, That all alcoholic spirits so obtained at any industrial distillery shall be denatured, and all spirits so obtained at any fruit distillery shall be removed and used only for nonbeverage purposes or for denaturation.

[¶ 460] **Sec. 619.** That the collection of the tax on imported still wines, including vermouth, and sparkling wines, including champagne, and on imported liqueurs, cordials, and similar compounds, may be made within the discretion of the Commissioner, with the approval of the Secretary, by assessment instead of by stamps.

[¶ 461] **Sec. 620.** That whoever evades or attempts to evade any tax imposed by sections 611 to 615, both inclusive, or any requirement of sections 610 to 621, both inclusive, or regulation issued pursuant thereto, or whoever, otherwise than as provided in such sections, recovers or attempts to recover any spirits from domestic or imported wine, or whoever rectifies, mixes, or compounds with distilled spirits any domestic wines, other than in the manufacture of liqueurs, cordials, or similar compounds, shall, on conviction, be punished for each such offense by a fine of not exceeding \$5,000, or imprisonment for not more than five years, or both, and in addition thereto by a penalty of double the tax evaded, or attempted to be evaded, to be assessed and collected in the same manner as taxes are assessed and collected, and all wines, spirits, liqueurs, cordials, or similar compounds as to which such violation occurs shall be forfeited to the United States. But the provisions of this section and the provisions of section 3244 of the Revised Statutes, as amended, relating to rectification, or other internal-revenue laws of the United States, shall not be held to apply to or prohibit the mixing or blending of wines subject to tax under the provisions of sections 611 to 615, both inclusive, with each other or with other wines for the sole purpose of perfecting such wines according to commercial standards: Provided, That nothing herein contained shall be construed as prohibiting the use of tax-paid grain or other ethyl alcohol in the fortification of sweet wines as defined in section 610 of this Act and section 43 of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, as amended by this Act.

[¶ 462] **Sec. 621.** That the Commissioner, by regulations to be approved by the Secretary, may require the use at each fruit distillery of such spirit meters, and such locks and seals to be affixed to fermenters, tanks, or other vessels and to such pipe connections as may in his judgment be necessary or expedient, and is hereby authorized to assign to any such distillery and to each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers in the capacity of gaugers as may be necessary for the proper supervision of the manufacture of brandy or the making or fortifying of wines sub-

ject to tax imposed by this section; and the compensation of such officers shall not exceed \$5 per diem while so assigned, together with their actual and necessary travelling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner, with the approval of the Secretary, but not to exceed \$2.50 per diem for such board bills.

[¶ 463] **Sec. 622.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make such allowances for unavoidable loss of wines while on storage or during cellar treatment as in his judgment may be just and proper.

[¶ 464] **Sec. 623.** That the second paragraph of section 3264 of the Revised Statutes, as amended by section 5 of the Act of March 1, 1879, and as further amended by the Act of June 22, 1910, be amended so as to read as follows:

[¶ 465] "In all surveys forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operated on the sour-mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain, and except that in distilleries where the filtration-aeration process is used, with the approval of the Commissioner of Internal Revenue; that is, where the mash after it leaves the mash tub is passed through a filtering machine before it is run into the fermenting tub, and only the filtered liquor passes into the fermenting tub, there shall hereafter be no limitation upon the number of gallons of water which may be used in the process of mashing or filtration for fermentation; but the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in order to protect the revenue, shall be authorized to prescribe by regulation, to be made by him, such character of survey as he may find suitable for distilleries using such filtration-aeration process. The provisions hereof relating to filtration-aeration process shall apply only to sweet-mash distilleries."

[¶ 466] **Sec. 624.** That under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, alcohol or other distilled spirits of a proof strength of not less than one hundred and eighty degrees intended for export free of tax may be drawn from receiving cisterns at any distillery, or from storage tanks in any distillery warehouse, for transfer to tanks or tank cars for export from the United States, and all provisions of existing law relating to the exportation of distilled spirits not inconsistent herewith shall apply to spirits removed for export under the provisions of this Act.

[¶ 467] **Sec. 625.** That section 3255 of the Revised Statutes as amended by the Act of June 3, 1896, and as further amended by the Act of March 2, 1911, be further amended so as to read as follows:

[¶ 468] "**Sec. 3255.** The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, plums, pawpaws, persimmons, prunes, figs, or cherries, from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: Provided, That where, in the manufacture of wine, artificial sweetening has been used the wine or the fruit pomace residuum may be used in the distillation of brandy, and such use shall not prevent the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, from exempting such distiller from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so: And

provided further, That the distillers mentioned in this section may add to not less than five hundred gallons (or ten barrels) of grape cheese not more than five hundred gallons of a sugar solution made from cane, beet, starch, or corn sugar, 95 per centum pure, such solution to have a saccharine strength of not to exceed 10 per centum, and may ferment the resultant mixture on a winery or distillery premises, and such fermented product shall be regarded as distilling material."

[¶ 469] **Sec. 626.** That distilled spirits known commercially as gin of not less than 80 per centum proof may at any time within eight years after entry in bond at any distillery be bottled at such distillery for export without the payment of tax, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe.

[¶ 470] **Sec. 627.** That section 3354 of the Revised Statutes as amended by the Act approved June 18, 1890, be, and is hereby, amended to read as follows:

[¶ 471] "**Sec. 3354.** Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of \$500, and the property used in such bottling or business shall be liable to forfeiture: Provided, however, That this section shall not be construed to prevent the withdrawal and transfer of unfermented, partially fermented, or fermented liquors from any of the vats in any brewery by way of a pipe line or other conduit to another building or place for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue at the expense of the United States: Provided further, That the tax imposed in section 3339 of the Revised Statutes shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and defacement, by the collector of the district or his deputy, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed. The stamps thus canceled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same."

TAX

ON

SOFT DRINKS AND OTHER BEVERAGES SOLD IN BOTTLES OR OTHER CLOSED CONTAINERS

SECTIONS 628, 629, TITLE VI REVENUE ACT OF 1918

Law and Regulations 52

Indexed

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LAW,
AND REGULATIONS 52
RELATING TO

TAX ON BEVERAGES SOLD IN BOTTLES OR OTHER CLOSED CONTAINERS

BEVERAGES DERIVED FROM CEREALS OR SUBSTITUTES.

[¶ 472] **Sec. 628.** That there shall be levied, assessed, collected, and paid in lieu of the taxes imposed by sections 313 and 315 of the Revenue Act of 1917—

(a) Upon all beverages derived wholly or in part from cereals or substitutes therefor, and containing less than one-half of one per centum of alcohol, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 15 per centum of the price for which so sold.

[¶ 473] **Article 1. Effective date.**—The tax imposed by section 628 of the Revenue Act of 1918 is on beverages sold by the manufacturer, producer, importer or bottler on or after February 25, 1919, though manufactured, produced, imported or bottled before that date. The tax, beginning on said date, supersedes the tax levied by sections 313 and 315 of the Revenue Act of 1917. The Revenue Act of 1917 remains in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes. See section 1400 (b) of the Revenue Act of 1918.

[¶ 474] **Art. 2. Tax on cereal beverages.**—The tax imposed is 15 per cent of the manufacturer's selling price on all beverages produced wholly or in part from wheat, oats, rye, barley, buckwheat, corn, rice, or any other cereal or substitute therefor, when sold. The tax is on beverages which contain less than one-half of 1 per cent of alcohol and which are sold in bottles or other closed containers.

[¶ 475] **Art. 3. Use of terms.**—Unless obviously inapplicable the term "manufacturer" as used in these regulations includes "producer," "importer," and "bottler." The term "person" includes partnerships, corporations and associations, as well as individuals.

[¶ 476] **Art. 4. Who is a manufacturer.**—The person who prepares or produces a liquid in a form suitable for consumption as a beverage is a manufacturer. If an article is sold before it has assumed such form or reached such stage of manufacture the vendor is not considered a manufacturer. Thus, syrups and extracts which require further process of manufacture before becoming suitable for use as a beverage are not taxable, but the tax is on the sale by the person subjecting them to the process of manufacture which results in the production of a liquid suitable for consumption as a beverage. Sirups or extracts, however, put up in bottles or other closed containers in a form suitable for sale at retail, which can be converted into a beverage by the consumer merely adding water or water and sweetening, thus making them available for immediate consumption as a beverage and which are advertised and held out as adaptable for such use, are taxable when sold by the manufacturer. A person who is employed to make a beverage and receives for it the cost of materials and labor plus a specified profit shall be considered a manufacturing agent and the person who procures the preparation of the beverage for purposes of sale will be considered the manufacturer.

[¶ 477] **Art. 5. Who is a manufacturer: examples.**—Where beverages are prepared, in a form suitable for consumption, by A who marks or labels them

with the name or trade mark of B who, on their being delivered to him, sells them without further manufacture to his own customers, A is the manufacturer liable for tax, providing the transaction between A and B is an actual sale of the beverages and not merely the employment of A by B, as his agent, to manufacture them at a specified profit. If beverages are manufactured by A and sold by him to B, in a form suitable for sale as a beverage without further process of manufacture and B bottles them and sells them, the taxable sale is the sale by A. If, however, B subjects such beverages to further process of manufacture, as by converting them into some other kind of beverage, the sale by him is also taxable. The manufacturer may be the bottler or the proprietor of a soda fountain. Soft drinks, including those derived wholly or in part from cereals or substitutes therefor, compounded or mixed at a soda fountain, ice cream parlor or other similar place of business and sold in bottles or other closed containers are taxable under section 628 (a) and not under section 630 of the Revenue Act of 1918, though such drinks are sold for consumption in or in proximity to such place of business.

[¶ 478] Art. 6. Tax payable by the manufacturer.—The tax is to be paid by the manufacturer on all sales made directly by him or through an agent. If the manufacturer has a sales agent or sales agency to whom he nominally sells beverages, but retains an interest in the profits from the resale, the taxable sale is that made by the sales agent or agency. On beverages manufactured for a jobber by a foreign manufacturer the jobber must pay the tax as the importer. A receiver or trustee in bankruptcy of a manufacturer conducting a business under court order is liable to the tax upon beverages sold by him. Where a manufacturer consigns beverages to a retailer, retaining ownership in them until they are disposed of by the retailer, the manufacturer must pay the tax upon all sales by the retailer. Where a sales agent or distributor is a separate corporation and the sale to it is absolute with no further payments or benefits accruing to the manufacturer upon a resale or otherwise, the taxable sale is nevertheless that made by the distributor who is regarded as the agent of the manufacturer, provided substantially all of the stock of the distributor is held by or for the benefit of the manufacturer. Similarly, in the case of a selling corporation owning substantially all the stock of a manufacturing corporation which nominally sells all or a part of its product to the selling corporation, the manufacturing corporation is regarded as a manufacturing agent and the taxable sales are those made by the selling corporation. See articles 4 and 5 of these regulations.

[¶ 479] Art. 7. When tax attaches.—The tax attaches when the beverage is sold, that is to say, when the title to it passes from the vendor to the purchaser pursuant to a previous contract of sale or upon a sale without previous contract. When title passes is a question of fact dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. Where beverages are segregated from other beverages owned by the vendor and it is the intention of both the vendor and the purchaser at the time the beverages are segregated that they shall then belong to the purchaser, the title will be presumed to pass at such time. In the absence of an intention to the contrary the title is presumed to pass upon delivery of the beverage to the purchaser or to a carrier for the purchaser. In the case of a conditional sale where the title is reserved in the vendor until payment of the purchase price in full, the tax attaches (a) upon such payment, or (b) when title passes if before completion of the payment, or (c) when, before completion of the payments, the dealer disposes of the sale by charging off, by any method of accounting he may adopt, the unpaid portion of the contract price.

[¶ 480] Art. 8. Basis for tax: sale price.—The tax is on the sale by the manufacturer of the beverage. It is measured by the price for which the bever-

age is sold. It is on the actual sales price of the beverage sold and not on the list price where that differs from the sales price. If the sales price of a taxable beverage is increased to cover the tax, the tax is on such increased sales price, but where the tax is billed as a separate item it is not to be considered as an increase in the sales price. The tax is payable in respect to a sale made whether or not the purchase price is actually collected.

[¶ 481] Art. 9. **Basis for tax: discounts and expenses.**—A discount for cash or other discount made subsequently to the sale cannot be deducted in computing the price for the purpose of the tax. Where, however, beverages are sold over a period of time under an agreement for a quantity rebate the tax if originally computed on the gross price may be adjusted in the return for the month in which the price is finally determined. Commissions to agents and other expenses of sale are not deductible from the sales price. If articles are sold at the factory or f. o. b. cars at the place of manufacture and the freight or delivery charges from such place to the point of delivery are paid by the purchaser as a specific item, or if they are sold delivered at a sum less freight or delivery charges to be paid by the purchaser, such charges need not be included as a part of the price of the goods, but if the manufacturer sells goods at a delivered price and he himself pays the freight or delivery charges, he is not entitled to make any deduction on account of the inclusion in the price of such charges.

[¶ 482] Art. 10. **Basis for tax: exchanges.**—If beverages sold are returned and the sale entirely rescinded no tax is payable and if paid it may be credited against the tax included in a subsequent monthly return. See section 1310 (a) of the Revenue Act of 1918 and article 34. If part only of the beverages sold at one time is returned and credit or rebate allowed by the manufacturer therefor, the portion of the tax to be credited will be that proportion of the total tax paid which the amount allowed as a credit or rebate bears to the total sale price of all the beverages. If a beverage is sold and thereafter exchanged for another beverage of a higher price, the purchaser paying the difference, the manufacturer should pay the tax on the second sale, but may take as a credit against such tax that proportion of the tax paid on the returned beverage which the amount allowed as a credit for the return of such beverage on the second sale bears to the amount of the purchase price in the case of the first sale.

[¶ 483] Art. 11. **Basis for tax: containers.**—The amount paid for both the beverage and closed container is the basis for computing the tax though the container is billed separately. If the beverage is sold under an agreement by which the manufacturer is to refund the purchaser a specified amount upon the return of the container, the tax nevertheless attaches on the whole price, including the amount agreed to be refunded upon the return of the container. See section 1310 (a) of the Revenue Act of 1918. In such case the manufacturer may take credit in any monthly return for that proportion of the tax paid which the amount actually refunded to the purchaser for the return of the container bears to the total sales price as above computed. See article 34. In no case shall credit be allowed for containers of beverages sold before February 25, 1919. The credit shall be allowed only if (a) at the time of making return and paying the tax on the original sale a statement has been attached to the return showing the containers subject to refund and (b) at the time of the application for the credit separate affidavit is made of the refunds actually paid, identifying them with the sales referred to in (a).

[¶ 484] Art. 12. **Sales to the United States Government.**—The tax applies to beverages enumerated in section 628 when sold to the Government. Where, however, the Government supplies a manufacturer with all materials

and ingredients except a small component portion furnished by the manufacturer, under a contract stipulating that the manufacturer shall be guaranteed a certain profit, no tax is payable because the manufacturer does not sell the beverages. Beverages manufactured in plants taken over and operated by the Government are not subject to the tax.

SOFT DRINKS.

[¶ 485] [Sec. 628. That there shall be levied, assessed, collected, and paid in lieu of the taxes imposed by sections 313 and 315 of the Revenue Act of 1917 (a)] * * * upon all unfermented grape juice, ginger ale, root beer, sarsaparilla, pop, artificial mineral waters (carbonated or not carbonated), other carbonated waters or beverages, and other soft drinks, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 10 per centum of the price for which so sold.

[¶ 486] Art. 13. **Soft drinks.**—Fermented liquors other than cereal beverages are taxable at the rate of 10 per cent. The term "other soft drinks" includes, among other drinks, apple juice, loganberry juice, lime fruit juice, and other fruit juices sold as beverages by the manufacturer in bottles or other closed containers. The tax is on beverages which contain less than one-half of 1 per cent of alcohol. As to the basis for tax see articles 8-11. As to when the tax attaches see article 7. In general see articles 1-12.

NATURAL MINERAL OR TABLE WATERS.

[¶ 487] [Sec. 628. That there shall be levied, assessed, collected, and paid in lieu of the taxes imposed by sections 313 and 315 of the Revenue Act of 1917—]

(b) Upon all natural mineral or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 2 cents per gallon.

[¶ 488] Art. 14. **Drinking waters.**—The tax is 2 cents for each gallon of natural mineral water or table water sold by the producer, bottler, or importer in bottles or other closed containers at over 10 cents per gallon. A mineral water sold in the state that it comes from the ground except for filtration is subject to the tax. Distilled waters, aerated and artesian well waters sold for drinking purposes are subject to the tax. Carbonated natural mineral waters or natural table waters are taxable under subdivision (a) of section 628 of the Revenue Act of 1918, at the rate of 10 per cent on the producer's selling price and not under subdivision (b) of the said section at the rate of 2 cents per gallon. A bottler is the producer or any person who puts a liquid in bottles or other closed containers and sells it. As to when the tax attaches see article 7. In general see articles 1-12.

ADMINISTRATIVE AND GENERAL PROVISIONS.

MONTHLY RETURN AND PAYMENT OF TAX.

[¶ 489] Sec. 629. That each manufacturer, producer, bottler, or importer of any of the articles enumerated in section 628 shall make monthly returns under oath in duplicate and pay the taxes imposed in respect to such articles by such section to the collector for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return.

[¶ 490] Art. 15. **Return of tax.**—Section 1309 of the Revenue Act of 1918 provides that the Commissioner with the approval of the Secretary of the Treasury "may by regulation provide that any return required by Titles * * * VI * * * to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath." Accordingly, each manufacturer of any of

the beverages enumerated in section 628 of the Revenue Act of 1918 must make monthly returns under oath, in duplicate (except that if the amount of tax covered thereby is not in excess of \$10 such returns may be signed or acknowledged before two witnesses instead of being made under oath), and pay the tax imposed on such beverages to the collector for the district in which his principal place of business is located. Branch houses should in general make reports to the parent house which must include in its monthly returns the sales of the branch houses.

[¶ 491] Art. 16. **Time of filing returns.**—Returns must be made on or before the last day of each month covering the transactions of the preceding month. Such returns should be made on form 726 Revised. The tax in respect to sales made between February 25, 1919, and February 28, 1919, both inclusive, should be included in the return (first return under the Revenue Act of 1918) for March.

[¶ 492] Art. 17. **Payment of tax.**—The tax is to be paid at the time of making return. It shall attach without assessment by the Commissioner or notice from the collector, and it shall be due and payable to the collector at the time of filing the monthly returns.

PENALTIES.

[¶ 493] [Sec. 629] * * * If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 494] Art. 18. **Penalties.**—If any person liable to pay any taxes neglects or refuses to pay them when due, the collector or his deputy shall collect such taxes with 5 per cent additional and interest at the rate 1 per cent for each full month.

SPECIAL PENALTIES.

[¶ 495] Sec. 1308. (a) That any person required under Titles *, VI, *, * * * to pay, or to collect, account for and pay over any tax, or require by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: **Provided, however,** That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, * * * or for any offense for which a penalty has been recovered under section 3256 of the Revised States.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 496] Art. 19. **Penalty for nonpayment of tax.**—(a) Any person who fails to pay the tax when due and payable is liable to a penalty of \$1,000. If he willfully refuses to pay or willfully attempts to evade the tax, he is also liable to a fine of \$10,000 and costs and to imprisonment for one year. (b) Any officer or employee of a corporation or a member or employee of a partnership who in

the course of his duty fails to pay or collect the tax when due and payable is liable to a penalty of \$1,000. If he willfully refuses to pay or collect or willfully attempts to evade the tax, he is also liable to a fine of \$10,000 and costs and to imprisonment for a year, and to a penalty of the amount of the tax unpaid or evaded.

[¶ 497] Art. 20. **Penalties for failure to make return and for false return.**—(a) Any person who fails to make a return at the required time is liable to a penalty of \$1,000. If he willfully refuses to make a return he is also liable to a fine of \$10,000 and costs. (b) Any officer or employee of a corporation or a member or an employee of a partnership who in the course of his duty fails to make a return at the required time is liable to a penalty of \$1,000. If he willfully refuses to make a return he is also liable to a fine of \$10,000 and costs and to imprisonment for a year. (c) Section 3176 of the Revised Statutes, as amended by section 1317 of the **Revenue Act of 1918**, also provides:

[¶ 498] In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

MISREPRESENTATION OF TAX.

[¶ 499] Sec. 1319. That whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1000 or by imprisonment not exceeding one year, or both.

[¶ 500] Art. 21. **Misrepresentation of tax.**—If a manufacturer or other vendor misrepresents the tax he is guilty of a misdemeanor and is liable to a fine of \$1,000 and to imprisonment for a year. This provision is designed among other things to prevent a vendor adding more than the amount of the tax to the price of a beverage and representing that the increase is due to the tax.

TRANSFER OF BURDEN OF TAX: CONTRACTS PRIOR TO MAY 9, 1917.

[¶ 501] Sec. 1312 (1). That (a) if any person has prior to May 9, 1917, made a bona fide contract with a dealer for the sale * * * after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, * * * and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee * * * shall, in lieu of the vendor * * * pay so much of such tax as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, the tax collected under this Act shall be the tax in force on May 9, 1917.

[¶ 502] Art. 22. **Adjustment of tax.**—If a manufacturer has prior to May 9, 1917, made a bona fide contract with a dealer for the sale, after the tax takes effect, of any article upon which a tax is imposed and such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the dealer shall pay so much of said tax as is not so per-

mitted to be added to the contract price. If before May 9, 1917, A, a manufacturer, made a contract of the character described with B, a wholesaler, the liability for the tax on sales made on or after February 25, 1919, in pursuance of such contract, is on B with a duty on A to collect and to pay it to the collector as provided in article 25. If before May 9, 1917, B also made a contract of the character described, with C, a retailer, the liability for such tax thus imposed on B is transferred from B to C, and B is obligated to collect the tax from C and pay it over to A for payment to the collector. If, however, any person before May 9, 1917, made a contract of the character described with any person other than a dealer as defined in article 26, no tax is due in respect to the sale by him since none of the beverages taxable under section 628 of the Revenue Act of 1918, were taxable on May 9, 1917.

**TRANSFER OF BURDEN OF TAX: CONTRACTS PRIOR TO SEPTEMBER 3, 1918,
BEVERAGES NOT THEN TAXABLE.**

[¶ 503] **Sec. 1312 (2).** If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale * * * after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, * * * and in respect to which no corresponding tax was imposed by the Revenue Act of 1917, and (b) such contract does not permit the adding, to the amount to be paid under such contract, of the whole of the tax imposed by this Act, then the vendee * * * shall, in lieu of the vendor * * * pay so much of the tax imposed by this Act as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, no tax shall be collected under this Act.

[¶ 504] **Art. 23. Beverages not taxable under Revenue Act of 1917: taxable under Revenue Act of 1918.**—If before September 3, 1918, A, a manufacturer of ginger ale, who does not manufacture or import the carbonic acid gas used therein (in which case the ginger ale was not taxable under the Revenue Act of 1917), made a contract of the character above described with B, a wholesaler, the liability for the tax on sales made on or after February 25, 1919, in pursuance of such contract, is on B, with a duty on A to collect and pay it to the collector as provided in article 25. If before September 3, 1918, B also made a contract of the character described with C, a retailer, the liability for such tax, thus imposed on B, is transferred from B to C, and B is obligated only to collect the tax from C and pay it over to A for payment to the collector. If, however, any person before September 3, 1918, made a contract of the character described for the sale of such ginger ale with any person other than a dealer as defined in article 26, no tax is due in respect to the sale by him.

**TRANSFER OF BURDEN OF TAX: CONTRACTS PRIOR TO SEPTEMBER 3, 1918,
BEVERAGES WHEN TAXABLE.**

[¶ 505] **Sec. 1312 (3).** If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale * * * after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, * * * and in respect to which a corresponding tax was imposed by the Revenue Act of 1917, and (b) such contract does not permit the adding, to the amount to be paid under such contract, of the whole of the difference between such tax and the corresponding tax imposed by the Revenue Act of 1917, then the vendee * * * shall, in lieu of the vendor * * * pay so much of such difference as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, the tax collected under this Act shall be the tax in force on September 3, 1918.

[¶ 506] **Art. 24. Beverages taxable under Revenue Acts of 1917 and 1918.**—If before September 3, 1918, A, a manufacturer of grape juice (which was taxable under the Revenue Act of 1917) or of ginger ale, the carbonic acid gas used in which is manufactured or imported by him (in which case such ginger ale was taxable under the Revenue Act of 1917), made a contract of

the character above described with B, a wholesaler, then in respect to sales made on or after February 25, 1919, in pursuance of such contract, B is liable for so much of the difference between the 1 cent a gallon tax imposed by the Revenue Act of 1917 and the 10 per cent tax imposed by section 628 of the Revenue Act of 1918, as under the contract is not permitted to be added to the contract price. In such case A is under a duty to collect and pay to the collector as provided in article 25 the portion of the tax for which B is so liable. A must, however, include in his return and pay so much of the tax as B is not so liable for. If before September 3, 1918, B also made a contract of the character described with C, a retailer, the liability for such tax thus imposed on B is transferred from B to C, who is liable for the difference between the 10 per cent tax imposed by section 628 of the Revenue Act of 1918, and the amount allowed under the contract to be added to the contract price. In such case B is under a duty to collect and pay over to A for payment to the collector the portion of the tax for which C is so liable. If, however, any person before September 3, 1918, made a contract of the character described for the sale of grape juice with any person other than a dealer as defined in article 26, the tax to be collected under the Revenue Act of 1918 shall be the tax in force on September 3, 1918, namely, 1 cent a gallon.

TRANSFER OF BURDEN OF TAX: RETURN AND PAYMENT OF TAX.

[¶ 507] Sec. 1312 (4). The taxes payable by the vendee * * * under this section shall be paid to the vendor * * * at the time the sale * * * is consummated, and collected, returned, and paid to the United States by such vendor * * * in the same manner as provided in section 502.

[¶ 508] Art. 25. **Return and payment of tax.**—Section 1312 permits an adjustment of the tax between the manufacturer and the dealer, but it does not affect the liability of the manufacturer to return and pay the tax to the Government. The tax payable by the dealer under articles 22-24 shall be paid to the manufacturer at the time the sale is consummated and such manufacturer shall collect the amount of the tax from the dealer. **Section 502** of the Revenue Act of 1918 above referred to, provides:

[¶ 509] That each person receiving any payments * * * shall collect the amount of the tax, if any, * * * from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected * * * to the collector of the district in which the principal office or place of business is located. * * *

The returns required under this section shall contain such information, and be made at such times and in such manner, as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

[¶ 510] Accordingly the return must be made on or before the last day of the month following the month in which the sale is made. Such returns should be made on form 726 revised. The tax is to be paid at the time of making the return. The tax in respect to sales made between February 25, 1919, and February 28, 1919, both inclusive, should be included in the return for March. Each person receiving any payments referred to in section 1312 of the statute shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath in duplicate and pay the taxes so collected to the collector of the district in which his principal office or place of business is located. See articles 15-17. Any person making a refund of any payment upon which the tax is so collected may repay therewith the amount of the tax collected on such payment and the amount so repaid may be credited against amounts included in any subsequent monthly return. See article 34.

TRANSFER OF BURDEN OF TAX: "DEALER" DEFINED.

[¶ 511] Sec. 1312 (5). The term "dealer" as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale.

[¶ 512] Art. 26. **Who is a dealer.**—As used in articles 22-24 the term “dealer” includes not only dealers in the ordinary sense, that is, persons engaged in the business of selling beverages, but also persons who purchase beverages with intent to use them in the manufacture or production of another beverage intended for sale. It does not refer to or include a person buying a beverage for his personal consumption or use unless such use is the manufacture or production of another article intended for sale.

TAX ON BEVERAGES EXPORTED.

[¶ 513] Sec. 1310 (c). Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed under the provisions of Titles VI, * * * shall not apply in respect to articles sold or leased for export and in due course so exported. Under such rules and regulations the amount of any internal revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

[¶ 514] Art. 27. **Exemption of export sale.**—The tax does not attach to the sale of a beverage which is either shipped direct to a foreign destination by the manufacturer himself or sold by the manufacturer for export and in due course so exported by the purchaser. Where a manufacturer at the time a beverage is sold or shipped (whichever is prior) has in his possession an order or contract of sale showing in writing that the manufacturer is to export the beverage or that the purchaser is buying the beverage in order to export it prior to its being subjected to further manufacture there is a presumption that the sale of the beverage is exempt from tax as an export sale and the manufacturer may, for a period of six months, from the date of sale or shipment (whichever is prior), rely on such presumption. This presumption becomes conclusive upon the manufacturer's receiving and attaching to such order or contract, before the termination of such period of six months, due “proof of exportation” (see article 28) of such beverage. On the other hand, if within such period of six months the manufacturer has not received and attached to such order or contract such “proof of exportation,” then the presumption that such sale is an export sale disappears and the manufacturer shall include a tax on the sale of such beverage in his return for the month in which such period of six months expires. The order or contract of sale and the “proof of exportation” must be preserved by the manufacturer in such a way as to be readily accessible for inspection by internal-revenue officers. No sale shall be considered to be exempt from tax under section 1310 (c) of Revenue Act of 1918, unless its character as an export sale has been established in accordance with the above provisions.

[¶ 515] Art. 28. **Proof of exportation.**—By “proof of exportation” is meant: (1) An affidavit containing the following information: the name and address of the manufacturer, the name and address of the exporter (who, if not the manufacturer, must be a person who has purchased direct from the manufacturer), the respective dates of the sale or shipment (whichever is prior) and exportation of the beverage, the price for which purchased, the fact that the beverage has been exported by the manufacturer or original purchaser without having been subjected to further manufacture, the name of the port of foreign destination, the name and address of the carrier issuing the export bill of lading and any further information necessary to identify the beverage sold with the beverage exported; and (2) attached to such affidavit, a copy of the export bill of lading or a certificate by the agent or representative of the export carrier showing the exportation of the beverage or, if exported by parcels post, a copy of the certificate of mailing.

TRADE WITH POSSESSIONS OF UNITED STATES.

[¶ 516] Sec. 1304. That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax

equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of such islands: **Provided**, That there shall be levied, collected, and paid in such islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in such islands upon like articles there manufactured; and such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States.

[¶ 517] **Art. 29. Trade with possessions of United States.**—A sale which results in the shipment of beverages into the United States from the Virgin Islands is taxable to the same extent as a sale of beverages within the United States. Beverages going into the Virgin Islands from the United States are free from tax in the United States. The same rules apply to trade with Porto Rico and the Philippine Islands. See section 1000 of the Revenue Act of 1917 and section V of the Act of August 4, 1909, as amended by section IV, subdivision C, of the Act of October 3, 1913. The tax attaches, however, to beverages shipped to other possessions of the United States, including the Canal Zone.

EXTENSION OF EXISTING STATUTES.

[¶ 518] **Sec. 1305.** That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 519] **Art. 30. Aids to collection of tax.**—In collecting the tax on beverages the Commissioner has the benefit of all existing internal revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination and to comply with such regulations as may be prescribed. The books of every person liable to the tax shall be open at all times for inspection by examining internal-revenue officers.

FRACTIONAL PART OF CENT.

[¶ 520] **Sec. 1313.** That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

[¶ 521] **Art. 31. When fractional part of cent may be disregarded.**—In the payment of the tax, and in each step or computation necessary in determining its amount, a fractional part of a cent may be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

MEDIUM OF PAYMENT OF TAX.

[¶ 522] **Sec. 1314.** That collectors may receive, * * * uncertified checks in payment of * * * taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment

of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[¶ 523] Art. 32. **Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of taxes, provided such checks are collectible at par, that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

[¶ 524] Art. 33. **Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depositary bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depositary bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the Act of March 2, 1911.

CREDITS AND REFUNDS.

[¶ 525] Sec. 1310. (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 * * * the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

(b) Wherever in this Act a tax is required to be paid by the purchaser to the vendor at the time of a sale, and such sale is made on credit, then, under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax may, at the option of the vendor, be returned and paid by him to the United States, as if paid to him by the purchaser at the time of the sale, and in such case the vendor shall have a right of action in any court of competent jurisdiction against the purchaser for the amount of the tax so returned and paid to the United States.

[¶ 526] Art. 34. **Credits and refunds.**—If a manufacturer overpays the tax due with one monthly return, he may take credit for the overpayment against the tax due with a succeeding return. If under section 1312 of the statute or otherwise he similarly overcollects the tax, he shall refund the overcollection to the purchaser from him. See articles 22-25. If in a case under section 1312 he sells on credit (other than conditional sale), he shall return the tax at the time of the sale, but may defer collection of it from the purchaser. When a tax has been illegally or erroneously collected and where it is impossible or impracticable for the taxpayer to take credit as allowed by section 1310, above, on a subsequent monthly return, he may file a claim on form 46, to be obtained from the collector, for refund of the amount so paid. For the procedure with reference to claims for refund see sections 3220 and

3225 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, and Regulations No. 14 (revised).

AUTHORITY FOR REGULATIONS.

[¶ 527] Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

[¶ 528] Art. 35. **Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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TAX

ON

SOFT DRINKS, ICE CREAM AND SIMILAR ARTICLES SOLD AT SODA FOUNTAINS OR SIMILAR PLACES OF BUSINESS

SECTION 630 TITLE VI REVENUE ACT OF 1918

Law and Regulations 53

Indexed

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LAW,
AND REGULATIONS 53
RELATING TO

TAX ON SOFT DRINKS, ICE CREAM AND SIMILAR ARTICLES

SOFT DRINKS COMPOUNDED OR MIXED AT THE PLACE OF BUSINESS, AND ICE CREAM

[¶ 529] **Sec. 630.** That on and after May 1, 1919, there shall be levied, assessed, collected, and paid a tax of 1 cent for each 10 cents or fraction thereof the amount paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business, for drinks, commonly known as soft drinks, compounded or mixed at such place of business, or for ice cream, ice cream sodas, sundaes, or other similar articles of food or drink, when any of the above are sold on or after such date for consumption in or in proximity to such place of business.

[¶ 530] **Article 1. Effective date.**—The tax is upon soft drinks compounded or mixed at the place of business and upon ice cream, ice-cream sundaes, and similar articles sold at soda fountains, ice-cream parlors, and similar places of business on or after May 1, 1919.

[¶ 531] **Art. 2. Who is a vendor.**—For the purpose of the tax and as used in these regulations the term "vendor" means an individual, partnership, association, or corporation engaged in the business of selling any of the articles enumerated in section 630 to a purchaser for consumption. Thus, a vendor may be a manufacturer, jobber, wholesaler, retailer, trustee in bankruptcy, receiver or peddler.

[¶ 532] **Art. 3. Rate of tax.**—The tax is measured by the price for which the drink or food is sold. It is on the actual sales price at the rate of 1 cent for each 10 cents or fraction thereof of the amount paid for any of the articles mentioned in section 630. Each sale for 10 cents or less is taxed 1 cent and every sale for over 10 cents is taxed 1 cent for each 10 cents or fraction thereof of the price. The tax is upon the whole amount of the price paid by the purchaser. When several articles are the subject of a single sale, the total price paid is the unit for computing the tax. Thus, if the purchaser orders two sodas at the same time, each selling for 15 cents, the tax is 3 cents and not 4 cents. If, however, he buys one soda for 15 cents the tax is 2 cents and if he purchases another 15-cent drink the tax is 2 cents on the second sale. Any means by which separate purchasers pool their orders for the purpose of defeating or escaping the tax imposed by section 630 shall be carefully guarded against by the vendor, for its employment subjects the purchaser and the vendor (if he connives at it) to the penalties provided in section 1308 of the Act. See articles 15-17.

[¶ 533] **Art. 4. Place of business.**—The tax is upon the price of certain commodities "paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business." The words "other similar place of business" refer primarily to the character of the business transacted rather than to any physical resemblance to the place where such business is done. Whether a person selling the above described articles is conducting a place of business similar to a soda fountain or ice-cream parlor is a question dependent on the facts in each particular case. Sales of soft drinks, ice cream and similar articles by individuals or organizations, such as religious, educational or charitable societies, on special occasions only, as church festivals, social parties, etc., are not taxable; such sales in stands and booths at agricultural fairs, racing parks, public exhibitions, circuses, shows and similar places are taxable. The distinction is between sales made by a person conducting a place of busi-

ness, even though temporarily, and merely incidental sales which can not properly be considered "business." Sales of soft drinks, ice cream and similar articles of food or drink are not taxable when made in the regular course of business at a hotel, restaurant, cafeteria, lunch room or club house, unless such articles are sold separate and apart from meals. Any sales of soft drinks, ice cream and similar articles sold from a soda fountain are taxable even though sold as a part of a meal.

[¶ 534] Art. 5. **Consumption at place of business.**—The above section provides that the tax shall be levied upon the sale of "soft drinks, ice cream, ice-cream sodas, sundaes, or other similar articles of food or drink, when * * * sold * * * for consumption in or in proximity to such places of business." When any of the specified articles are sold in such containers or under such conditions as to indicate that they would ordinarily be consumed in or in proximity to the place of business they are taxable. Sales of ice cream in cones are taxable. When ice cream or any similar article is sold under conditions which indicate that it usually would be consumed at or in proximity to the premises the fact that the purchaser does not consume it there but carries it away does not render it free from tax. When soft drinks, ice cream or similar articles of drink or food are sold to be carried away for consumption at a place not in proximity to the place of business, such drink, ice cream, or food, being placed in containers of a kind ordinarily used to convey the articles indicated, the sales are not taxable.

[¶ 535] Art. 6. **Beverages taxable.**—In general, such beverages as are commonly known as soft drinks which are compounded or mixed at the fountain where sold are subject to the tax. Beverages sold at the fountain, ready for consumption, from a bottle or closed container on which a tax has been paid under section 628 of the Revenue Act of 1918 are not subject to the tax.

[¶ 536] Art. 7. **Articles taxable: Examples.**—The following articles of food or drink are subject to tax within the meaning of section 630 of the Revenue Act of 1918: all beverages when compounded or mixed at the fountain, such as orangeade, lemonade, pineapple juice, coca cola, root beer, moxie, phosphates, fruit and flavoring sirups compounded or mixed with plain or carbonated water, milk shakes in any form, malted milk shakes in any form, cream and egg shakes, ice cream, ice-cream sodas, ice-cream sundaes, ice-cream sandwiches, flavored ices and all other similar drinks or foods not enumerated or specified under articles 8 and 9. This list is not intended or considered to be complete but merely illustrative of the class of articles subject to tax.

[¶ 537] Art. 8. **Beverages not taxable: Examples.**—There are certain drinks which are often sold at soda fountains, ice-cream parlors or similar places of business which are not regarded as soft drinks, ice-cream products or similar articles of drink or food within the meaning of section 630 of the Revenue Act of 1918. Such beverages consist of such articles as hot beef tea, coffee (hot, cold, or iced), tea (hot, cold, or iced), buttermilk, milk, hot chocolate or cocoa, hot clam broth, hot clam bisque, hot tomato bisque and hot tomato bouillon. No tax applies on the sale of beverages or drinks, such as ginger ale, root beer, moxie, mineral water, etc., when served directly from a closed container, in which case the manufacturer's tax on such drinks has already been levied. See section 628 of the Revenue Act of 1918. However, if any of the drinks or beverages herein mentioned are compounded or mixed with carbonated water, flavors, or other ingredient at the fountain, they are taxable.

[¶ 538] Art. 9. **Beverages not taxable: Medicinal.**—There are certain medicines, such as bromo seltzer, citrate of magnesia, rochelle salts, seidlitz powders, bicarbonate of soda, castor oil, epsom salts and essence of pepsin, which are often sold at soda fountains, ice-cream parlors and similar places of

business, which are not soft drinks or ice-cream products or similar articles of food or drink, and hence are not taxable.

ADMINISTRATIVE AND GENERAL PROVISIONS.

TAX PAID BY PURCHASER.

[§ 539] [Sec. 630] * * * Such tax shall be paid by the purchaser to the vendor at the time of the sale and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 502.

[§ 540] Art. 10. **Payment of tax.**—Tax is upon the sale and must be paid at the time of sale by the purchaser to the vendor.

[§ 541] Art. 11. **Collection and return of tax.**—The tax imposed must be paid by the purchaser to the vendor and the vendor must make return under oath, in duplicate, and pay the tax so collected to the collector of the district in which his principal place of business is located, on or before the last day of each month for the business done during the preceding month. Daily records shall be kept by the proprietors or their agents in charge, showing the number of sales (grouped according to amount of sale) and the tax paid thereon. The daily records of the proprietors or their agents, with copies of their monthly returns, shall be kept on file, in the places of business of such proprietors, in such manner as to be readily accessible to investigating internal revenue officers. In case the proprietor of a soda fountain, ice-cream parlor or similar place of business does not use an adequate cash register or check system from which daily and monthly records may be kept, a separate receptacle shall be used to retain the tax collected by the vendor from the purchaser. Such receptacle shall be so arranged or subdivided into compartments suitable for holding the different amounts of tax collected, in order to facilitate the compilation of the daily and monthly records of tax collection.

EXTENSION OF EXISTING STATUTES.

[§ 542] Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[§ 543] Art. 12. **Aids to collection of tax.**—In collecting the tax the Commissioner has the benefit of all existing internal revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination and to comply with such regulations as may be prescribed.

MEDIUM OF PAYMENT OF TAX.

[§ 544] Sec. 1314. That collectors may receive, * * * uncertified checks in payment of * * * taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall

prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[§ 545] Art. 13. **Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of taxes, provided such checks are collectible at par; that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instrument included in the same remittance; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

[§ 546] Art. 14. **Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the Act of March 2, 1911.

PENALTIES.

[§ 547] Sec. 1308. (a) That any person required under Title * * * VI * * * to pay, or to collect, account for any pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of the prosecution

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended.

* * * * *

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[§ 548] Art. 15. Penalty for nonpayment of tax.—(a) Any person who fails to pay the tax when due and payable is liable to a penalty of \$1,000. If he willfully refuses to pay or willfully attempts to evade the tax, he is also liable to a fine of \$10,000 and costs and to imprisonment for one year. (b) Any officer or employee of a corporation or a member or employee of a partnership who in the course of his duty fails to pay or collect the tax when due and payable is liable to penalty of \$1,000. If he willfully refuses to pay or collect or willfully attempts to evade the tax, he is also liable to a fine of \$10,000 and costs and to imprisonment for a year, and to a penalty of the amount of the tax unpaid or evaded. **Section 502** of the Revenue Act of 1918 also provides:

[§ 549] If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

Accordingly, if any person liable to pay any taxes neglects or refuses to pay them when due, it shall be lawful for the collector or his deputy to collect such taxes with 5 per cent additional and interest at 12 per cent per annum.

[§ 550] Art. 16. Penalties for failure to make and for false return.—(a) Any person who fails to make a return at the required time is liable to a penalty of \$1,000. If he willfully refuses to make a return he is also liable to a fine of \$10,000 and costs. (b) Any officer or employee of a corporation or a member or employee of a partnership who in the course of his duty fails to make a return at the required time is liable to a penalty of \$1,000. If he willfully refuses to make a return he is also liable to a fine of \$10,000 and costs and to imprisonment for a year. (c) **Section 3176** of the Revised Statutes, as amended by **Section 1317** of the Revenue Act of 1918, also provides:

[§ 551] In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

MISREPRESENTATION OF TAX.

[§ 552] Sec. 1319. That whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

[§ 553] Art. 17. Misrepresentation of tax.—If a vendor misrepresents the tax, he is guilty of a misdemeanor and is liable to a fine of \$1,000 and to imprisonment for a year. This provision is designed among other things to prevent a vendor adding more than the amount of tax to the price of the drink, ice cream, or similar articles of drink or food sold and representing that the increase in price is due to the tax. If the sales price of the taxable article is increased to cover the tax, the tax is on such increased sales price, but where the tax is collected as a separate item it is not to be considered as an increase in the sales price.

CREDITS AND REFUNDS.

[¶ 554] **Sec. 1310.** (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630, * * * the person making such overpayment or overcollection may take credit therefore against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

(b) Wherever in this Act a tax is required to be paid by the purchaser to the vendor at the time of a sale, and such sale is made on credit, then, under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax may, at the option of the vendor, be returned and paid by him to the United States as if paid to him by the purchaser at the time of the sale, and in such case the vendor shall have a right of action in any court of competent jurisdiction against the purchaser for the amount of the tax so returned and paid to the United States.

[¶ 555] **Art. 18. Credits and refunds.**—If a vendor overpays the tax due with one monthly return, he may take credit for the overpayment against the tax due with a succeeding return. For the procedure with reference to claims for refund see sections 3220 and 3225 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, and Regulations No. 14 (revised). When a tax has been illegally or erroneously collected and where it is impossible or impracticable for the taxpayer to take credit as allowed by section 1310; above, on a subsequent monthly return, he may file a claim on form 46, to be obtained from the collector, for refund of the amount so paid.

AUTHORITY FOR REGULATIONS.

[¶ 556] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

[¶ 557] **Art. 19. Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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TAX

ON

CIGARS, TOBACCO, AND MANUFACTURERS THEREOF

SECTIONS 700 TO 705 OF TITLE
VII OF 1918 REVENUE ACT

Statute only. Not Regulations nor
Treasury Decisions

LAW,
RELATING TO

TAX ON CIGARS, TOBACCO AND MANUFACTURERS THEREOF

SECTIONS 700 TO 800 OF TITLE VII OF 1918 ACT.
(Statute only. Not Regulations nor Treasury Decisions.)

[§ 558] **Sec. 700.** (a) That upon cigars and cigarettes manufactured in or imported into the United States, and hereafter sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid under the provisions of existing law, in lieu of the internal-revenue taxes now imposed thereon by law, the following taxes, to be paid by the manufacturer or importer thereof—

On cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, \$1.50 per thousand;

On cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at not more than 5 cents each, \$4 per thousand;

If manufactured or imported to retail at more than 5 cents each and not more than 8 cents each, \$6 per thousand;

If manufactured or imported to retail at more than 8 cents each and not more than 15 cents each, \$9 per thousand;

If manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, \$12 per thousand;

If manufactured or imported to retail at more than 20 cents each, \$15 per thousand;

On cigarettes made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, \$3 per thousand;

Weighting more than three pounds per thousand, \$7.20 per thousand.

(b) Whenever in this section reference is made to cigars manufactured or imported to retail at not over a certain price each, then in determining the tax to be paid regard shall be had to the ordinary retail price of a single cigar.

(c) The Commissioner may, by regulation, require the manufacturer or importer to affix to each box, package, or container a conspicuous label indicating the clause of this section under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on such box or container.

(d) Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or sale, in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each, and shall securely affix to each of such packages or parcels a suitable stamp denoting the tax thereon and shall properly cancel the same prior to such sale or removal for consumption or sale under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in a like manner, in addition to the import stamp indicating inspection of the custom house before they are withdrawn therefrom.

[§ 559] **Sec. 701.** (a) That upon all tobacco and snuff manufactured in or imported into the United States, and hereafter sold by the manufacturer

or importer, or removed for consumption or sale, there shall be levied, collected, and paid, in lieu of the internal-revenue taxes now imposed thereon by law, a tax of 18 cents per pound, to be paid by the manufacturer or importer thereof.

(b) Section 3362 of the Revised Statutes, as amended, is hereby amended to read as follows:

[¶ 560] **Sec. 3362.** All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description and in no other manner:

"All smoking tobacco, snuff, fine-cut chewing tobacco, all cut and granulated tobacco, all shorts, the refuse of fine-cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse scraps, clippings, cuttings, and sweepings of tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one-eighth of an ounce, three-eighths of an ounce, and further packages with a difference between each package and the one next smaller of one-eighth of an ounce up to and including two ounces, and further packages with a difference between each package and the one next smaller of one-fourth of an ounce up to and including four ounces, and packages of five ounces, six ounces, seven ounces, eight ounces, ten ounces, twelve ounces, fourteen ounces, and sixteen ounces: Provided, That snuff may, at the option of the manufacturer, be put up in bladders and in jars containing not exceeding twenty pounds.

"All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight.

"And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the tobacco in each package: Provided, That these limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported: And provided further, That perique tobacco, snuff flour, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe: And provided further, That wood, metal, paper, or other materials may be used separately or in combination for packing tobacco, snuff, and cigars, under such regulations as the Commissioner of Internal Revenue may establish."

[¶ 561] **Sec. 702.** That upon all the articles enumerated in section 700 or 701, which were manufactured or imported, and removed from factory or customhouse on or prior to the date of the passage of this Act, and upon which the tax imposed by existing law has been paid, and which are, on the day after the passage of this Act, held by any person and intended for sale, there shall be levied, assessed, collected, and paid a floor tax equal to the difference between (a) the tax imposed by this Act upon such articles according to the class in which they are placed by this title, and (b) the tax imposed upon such articles by existing law other than section 403 of the Revenue Act of 1917.

[¶ 562] **Sec. 703.** That there shall be levied, collected, and paid, in lieu of the taxes imposed by section 404 of the Revenue Act of 1917, upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and hereafter sold by the manufacturer or importer to any person (other than to a manufacturer of cigarettes for use by him in the manufacture of cigarettes) the following taxes, to be paid by the manufacturer

or importer: On each package, book, or set, containing more than twenty-five but not more than fifty papers, $\frac{1}{2}$ cent; containing more than fifty but not more than one hundred papers, 1 cent; containing more than one hundred papers, $\frac{1}{2}$ cent for each fifty papers or fractional part thereof; and upon tubes, 1 cent for each fifty tubes or fractional part thereof.

Every manufacturer of cigarettes purchasing any cigarette paper made up into tubes (a) shall give bond in an amount and with sureties satisfactory to the Commissioner that he will use such tubes in the manufacture of cigarettes or pay thereon a tax equivalent to the tax imposed by this section, and (b) shall keep such records and render under oath such returns as the Commissioner finds necessary to show the disposition of all tubes purchased or imported by such manufacturer of cigarettes.

[¶ 563] **Sec. 704.** That section 35 of the Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," approved August 5, 1909, be, and is hereby, repealed, to take effect April 1, 1919.

That section 3360 of the Revised Statutes be, and is hereby, amended to read as follows:

[¶ 564] "**Sec. 3360.** (a) Every dealer in leaf tobacco shall file with the collector of the district in which his business is carried on, a statement in duplicate, subscribed under oath, setting forth the place, and if in a city, the street and number of the street, where his business is to be carried on, and the exact location of each place where leaf tobacco is held by him on storage, and, whenever he adds to or discontinues any of his leaf tobacco storage places, he shall give immediate notice to the collector of the district in which he is registered.

"Every such dealer shall give a bond with surety, satisfactory to, and to be approved by, the collector of the district, in such penal sum as the collector may require, not less than \$500; and a new bond may be required in the discretion of the collector or under instructions of the Commissioner.

"Every such dealer shall be assigned a number by the collector of the district, which number shall appear in every inventory, invoice and report rendered by the dealer, who shall also obtain certificates from the collector of the district setting forth the place where his business is carried on and the places designated by the dealer as the places of storage of his tobacco, which certificates shall be posted conspicuously within the dealer's registered place of business, and within each designated place of storage.

"(b) Every dealer in leaf tobacco shall make and deliver to the collector of the district a true inventory of the quantity of the different kinds of tobacco held or owned, and where stored by him, on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of January, such inventory to be made under oath and rendered in such form as may be prescribed by the Commissioner.

"Every dealer in leaf tobacco shall render such invoices and keep such records as shall be prescribed by the Commissioner, and shall enter therein, day by day, and upon the same day on which the circumstance, thing or act to be recorded is done or occurs, an accurate account of the number of hogsheads, tierces, cases and bales, and quantity of leaf tobacco contained therein, purchased or received by him, on assignment, consignment, for storage, by transfer or otherwise, and of whom purchased or received, and the number of hogsheads, tierces, cases and bales, and the quantity of leaf tobacco contained therein, sold by him, with the name and residence in each instance of the per-

son to whom sold, and if shipped, to whom shipped, and to what district; such records shall be kept at his place of business at all times and preserved for a period of two years, and the same shall be open at all hours for the inspection of any internal-revenue officer or agent.

"Every dealer in leaf tobacco on or before the tenth day of each month, shall furnish to the collector of the district a true and complete report of all purchases, receipts, sales and shipments of leaf tobacco made by him during the month next preceding, which report shall be verified and rendered in such form as the Commissioner, with the approval of the Secretary, shall prescribe.

"(c) Sales or shipments of leaf tobacco by a dealer in leaf tobacco shall be in quantities of not less than a hogshead, tierce, case, or bale, except loose leaf tobacco comprising the breaks on warehouse floors, and except to a duly registered manufacturer of cigars for use in his own manufactory exclusively.

"Dealers in leaf tobacco shall make shipments of leaf tobacco only to other dealers in leaf tobacco, to registered manufacturers of tobacco, snuff, cigars or cigarettes, or for export.

"(d) Upon all leaf tobacco sold, removed or shipped by any dealer in leaf tobacco in violation of the provisions of subdivision (c), or in respect to which no report has been made by such dealer in accordance with the provisions of subdivision (b), there shall be levied, assessed, collected and paid a tax equal to the tax then in force upon manufactured tobacco, such tax to be assessed and collected in the same manner as the tax on manufactured tobacco.

"(e) Every dealer in leaf tobacco

"(1) who neglects or refuses to furnish the statement, to give bond, to keep books, to file inventory or to render the invoices, returns or reports required by the Commissioner, or to notify the collector of the district of additions to his places of storage; or

"(2) who ships or delivers leaf tobacco, except as herein provided; or

"(3) who fraudulently omits to account for tobacco purchased, received, sold, or shipped;
shall be fined not less than \$100 or more than \$500, or imprisoned not more than one year, or both.

"(f) For the purposes of this section a farmer or grower of tobacco shall not be regarded as a dealer in leaf tobacco in respect to the leaf tobacco produced by him."

TAX
ON
ADMISSIONS

SEC. 800 TITLE VIII OF REVENUE ACT OF 1918

Law,
Regulations No. 43 (Revised) Part I
and Treasury Decisions

Indexed

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LAW,
REGULATIONS No. 43 (REVISED), PART I
AND TREASURY DECISIONS
RELATING TO THE
TAX ON ADMISSIONS

[¶ 565] **Sec. 800.** (a) That from and after April 1, 1919, there shall be levied, assessed, collected and paid, in lieu of the taxes imposed by section 700 of the Revenue Act of 1917:

(1) A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place on or after such date, including admission by season ticket or subscription, to be paid by the person paying for such admission.

Sec. 800. (c) The term "admission" as used in this title includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor.

[¶ 566] **Art. 1.** Complete analysis of provisions of Revenue Act of 1918, concerning Tax on Admissions.

IMPOSITION OF TAX

(See Articles 4-28.)

Character of admission.	Tax.	Who to pay tax.
1. "Admission ¹ [paid at the established price of such admission or a higher price] to any place * * * including admission ¹ by season ticket or subscription." (Section 800 (a) (1).)	"1 cent for each 10 cents or fraction thereof of the amount paid."	
2. "In the case of * * * bona fide employees, municipal officers on official business, persons in the military or naval forces of the United States when in uniform, and children under twelve years of age admitted ¹ * * * at reduced rates to any place" ("including admission ¹ by season ticket or subscription"). (Section 800 (a) (1).)	"1 cent for each 10 cents or fraction thereof of the amount paid."	"The person paying for such admission."
3. "In the case of * * * bona fide employees, municipal officers on official business, persons in the military or naval forces of the United States when in uniform, and children under twelve years of age admitted ¹ free * * * to any place." (Section 800 (a) (1).)	No tax.....	"The person paying for such admission."

¹ "The term 'admission' [or 'admitted'] as used in this title includes [the use of] seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor." (Section 800 (c).)

IMPOSITION OF TAX—Continued.

Character of admission.	Tax.	Who to pay tax.
4. "In the case of" any other person "admitted ¹ free or at reduced rates ("including admission ¹ by season ticket or subscription") to any place at a time when and under circumstances under which an admission ¹ charge is made to other persons." (Section 800 (a) (2).)	"1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations."	"The person so admitted."
5. "In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement." (Section 800 (a) (5).)	A tax (in lieu of the tax specified in 1, 2, and 3, above) "equivalent to 10 per centum of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder."	"The lessee or holder."
6. "Admission ¹ to any public performance for profit at any roof garden, cabaret or other similar entertainment, to which the charge for admission ¹ is wholly or in part included in the price paid for refreshment, service, or merchandise." (Section 800 (a) (6).)	"1½ cents for each 10 cents or fraction thereof of the amount paid"—"the amount paid for such admission ¹ to be deemed to be 20 per centum of the amount paid for refreshment, service, or merchandise."	"The person paying for each such refreshment, service or merchandise."

TAXES ON CHARGES IN EXCESS OF ESTABLISHED PRICE.²

(See Articles 29-31.)

Character of excess charge.	Tax.	Tax to be returned and paid—
1. The amount by which "the amount for which the proprietors, managers, or employees of any opera house, theater, or other place of amusement sell or dispose of tickets or cards of admission" ¹ is "in excess of the regular or established price or charge therefor." (Section 800 (a) (4).)	"A tax equivalent to 50 per centum" of such excess.	"By the person selling such tickets" and "in the manner provided in section 903" of the Act.
2. The amount by which the amount for which "tickets or cards of admission ¹ to theaters, operas, and other places of amusement" are "sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement" "in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1)" of section 800 (a) of the Act. (Section 800 (a) (3).)	"A tax equivalent to 5 per centum of the amount of such excess" or "if sold for more than 50 cents in excess of the sum of such established price plus the amount of any tax imposed under paragraph (1)" then "a tax equivalent to 50 per centum of the whole amount of such excess."	"By the person selling such tickets" and "in the manner provided in section 903" of the Act.

¹ See note 1, prior page.² These taxes are in addition to, not in place of, the Taxes on Admissions above. The amount of this item is to be added to all amounts due, during the calendar month, from the theater as taxes on charges in excess of established price and the sum total entered as item d on Form 729 (Revised) being its return for that month. If the sum total comes out with a fractional part of a cent this fraction if less than ½ cent is to be disregarded, but if ½ cent or more, the sum total is to be increased by 1 cent (see section 1313 of the Act).

EXEMPTIONS.

(Section 800 (b)—See Articles 32-47.)

“No tax shall be levied under this title in respect to any admissions:”

1. “All the proceeds of which inure exclusively to the benefit of:”

(a)	“Religious, educational, or charitable	}	{ institutions, societies, or organizations.”
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(b) “Societies for the prevention of cruelty to children or animals.”

(c) “Organizations (1) conducted for the sole purpose of maintaining symphony orchestras and (2) receiving substantial support from voluntary contributions, (3) none of the profits of which are distributed to members of such organizations.”

(d) “Persons in the military or naval forces of the United States.”

2. “To agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.”

PRINTING OF PRICE ON TICKETS.

(Section 800 (d)—See Articles 48-56.)

“The price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back thereof, together with the name of the vendor if sold other than at the ticket office of the theater, opera, or other place of amusement. * * *

COLLECTION, RETURN, AND PAYMENT OF TAX.

(Sections 802, 502, 903, and 1309.)

TAXES ON ADMISSIONS.**Who to Pay Tax.**

(See Article 57.)

Paid Admission.

“Person making” payment for admission.

Free Admission.

“Person admitted” free.

Who to Collect, Return, and Pay Over Tax.

(See Article 57.)

Paid Admission.

“Person receiving” payment for admission.

Free Admission.

“Person admitting” person free.

TAXES ON CHARGES IN EXCESS OF ESTABLISHED PRICE.**Who to Return and Pay Tax.**

(See Article 58.)

Box-Office Sales.

“Person selling such tickets.”

Broker's Sales

“Person selling such tickets.”

RETURNS.

(See Article 63.)

“Monthly returns under oath” (but regulations may allow two witnesses to be used instead of oath for returns of \$10 or less), “in duplicate,” to “be made at such times in such manner” as provided in regulations.

PAYMENTS.

(See Article 63.)

“The tax shall, without assessment” or notice, “be due and payable,” at the time fixed “for filing the returns,” to the collector of internal revenue of the district in which the principal office or place of business is located.”

CREDITS AND REFUNDS.

(Sections 1310 (a) and 1316 (a).)

Credit for Overpayment.

(See Article 65.)

“Person making” overpayment “may take credit therefor against taxes due upon any monthly return.”

Refund of Overpayment.

(See Article 66.)

The Commissioner, subject to regulations, may refund taxes erroneously, illegally, or unjustly collected, or excessive in amount, and "all penalties collected without authority."

Refund of Overcollection.

(See Article 67.)

"Person making" overcollection "shall make refund" of excess "upon proper application by the person entitled thereto."

PENALTIES.

(See Article 68.)

Act or default penalized.	Penalty applicable.	Section of Revenue Act of 1918.
Sale of "admission ticket or card on the "face or back" of "which the name of the vendor" ("if sold other than at the ticket office of the theater, opera, or other place of amusement") and the "price (exclusive of the tax to be paid by the person paying for admission) at which" the "ticket or card is sold" is not "conspicuously and indelibly printed, stamped, or written;" or sale of an admission-ticket or card "at a price in excess of the price so printed, stamped or written thereon."	Fine of not more than \$100 . . .	800 (d).
"Failure to make and file" return "within the time prescribed" (when return not filed later and reasonable cause shown for failure to file in time).	25 per cent addition to tax (to be collected as part of tax, or if tax already collected, then in same manner as tax).	Section 3176 U. S. Revised Statutes, as amended by section 1317.
Willfully making "false or fraudulent return."	50 per cent addition to tax (to be collected as above).	Do.
Failure to pay tax when due . . .	5 per cent addition to tax . . .	
Failure by any "person" to "pay, collect, or truly account for and pay over any such tax, make any such return, or supply any such information at the time or times required by law or regulation."	and 1 per cent interest for each full month from time tax due. Penalty of not more than \$1,000.	502 and 903. 1308 (a).
Willful refusal by any "person" to "pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation," or willful attempt "in any manner to evade such tax."	Fine of not more than \$10,000 . . or Imprisonment for not more than one year, or both.	1308 (b).
Willful refusal by any "person" to "pay, collect, or truly account for and pay over any such tax."	100 per cent addition to tax ² . .	1308 (c).

¹ "Person" includes "an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs." (Section 1308 (d).)

² "No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended," the substance of which is stated above. (Section 1308 (c).)

AUTHORITY FOR REGULATIONS.

(Section 1309—See Article 69.)

“The Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.”

IMPOSITION OF TAX.**Admissions Within Time Scope of Revenue Act of 1918.**

(Section 800 (a). See par. 565.)

[¶ 567] Art. 2. **Taxes on admissions.**—Every payment, no matter when it is made, for an admission which is to occur on or after April 1, 1919, is within the time scope of the Revenue Act of 1918, and its taxability is, therefore, determined by the provisions, including the exemption provisions (see Articles 32-47) of that Act. This is true not only of admissions at the established or a higher price (see Article 4), but also of reduced-rate admissions (see Articles 18 and 23) of leases of boxes or seats (see Article 25) and of admissions to roof gardens, cabarets, or similar entertainments (see Article 27), for though the phrase “on or after such date” is actually expressed, in section 800 (a), only in paragraph (1), nevertheless it is clearly implied in paragraphs (2), (5), and (6). So also every free admission (see Article 24), occurring on or after April 1, 1919, even if it occurs by virtue of a ticket, pass, or other card of admission, issued prior to April 1, 1919, is within the time scope of the Revenue Act of 1918, and its taxability is, therefore, determined by the provisions, including the exemption provisions (see Articles 32-47) of that Act.

[¶ 568] Art. 3. **Taxes on charges in excess of established price.**—Every amount, no matter when it is paid, which is charged, in excess of the established price, for a ticket or card of admission, to any opera house, theater, or other place of amusement (see Articles 29-31), which entitles a person to admission on or after April 1, 1919, is within the time scope of the Revenue Act of 1918 and its taxability is, therefore, determined by the provisions, including the exemption provisions (see Articles 32-47) of that Act. For though the phrase “on or after such date” is actually expressed, in section 800 (a), only in paragraph (1), nevertheless it is clearly implied in paragraphs (3) and (4).

TAXES ON ADMISSIONS.**Admissions at Established or Higher Price.**

(Section 800 (a) (1) and (c) of Revenue Act of 1918. See par. 565.)

[¶ 569] Art. 4. **Basis, rate, and computation of tax.**—Any amount paid for admission to any place,¹ at the established price of such admission² or a higher price, is subject³ under these provisions of the Act to a tax of 1 cent for each 10 cents or fraction thereof of the amount so paid. This tax (unlike the tax considered in Article 24), applies to the payment for admission, not to the admission itself, and so as soon as the payment for admission is made⁴ the tax applies irrespective of whether or not the admission itself ever takes place.⁵ The tax applies however small the established price of such admission may be, for the Act sets no minimum limit to its application, in this respect differing from the Revenue Act of 1917. The tax applies to each admission separately, and, therefore, if two or more admissions are paid for at once, whether for the same occasion or for different occasions by means of a season ticket,⁶ or subscription,⁶ or otherwise, the total tax is determined by computing separately at the above rate the tax on each admission, and by then adding

¹ For meaning of “amount paid for admission to any place” see Articles 5-16.

² For meaning of “established price of an admission” see Article 17.

³ Unless exempted by the exemption provisions of the Act. See Articles 32-47.

⁴ See note 1 under Article 57.

⁵ Nor does the mere fact that no admission ever takes place entitle one to a refund of the tax. See Article 67.

⁶ It should be noted, however, that if the season ticket or subscription gives a right to the permanent use of a box or seat or amounts to a lease for the use of such box or seat, then it is subject to the tax imposed by section 800 (a) (5) in lieu of the tax here imposed. See Article 25.

together the taxes so obtained. In other words, the tax for ten similar admissions will always be ten times the tax for each of the single admissions. The tax applies to the whole amount paid for any admission¹ and, therefore, if an admission is paid for in installments the balance of tax due upon the payment² of each installment after the first will not be based on the amount of that installment, but will be determined by computing the tax due on the total amount of all installments paid to date and deducting the amount of tax already paid.³ Where a ticket is purchased at the established or a higher price and then sold at an increase of price, the balance of admission tax due is determined in like manner.⁴

Examples.—(1) A man buys a theater ticket at the box office of the theater paying both the price of the ticket and the tax. Failing to use the ticket he returns to the box office the day after the performance and demands his money back, including the tax. The theater can refund the tax only if they also refund the price of the ticket for the tax is on the payment and, therefore, the only way to destroy the tax liability is to refund the payment. The mere failure to use the ticket has no effect on the tax liability. (See Article 67.)

(2) The established price of admission to a certain single-reel moving-picture show, whose proceeds inure to a nonexempt corporation, is 1 cent. As the Act has no minimum, payments for admission to this show are subject to tax, and, as the tax is 1 cent for each 10 cents or fraction thereof of the amount paid, the tax on each payment of 1 cent is itself 1 cent.

(3) The established price of admission (see Article 17) to the orchestra circle of a certain theater is \$2 and that price is printed on the ticket. The theater box office, however, sells this ticket for \$2.50. The tax to be paid by the person buying this ticket is 25 cents and not 20 cents, for the tax in such a case is based on the actual amount charged and not on the established price. The proprietor of the theater is also subject to a special tax on the 50 cents excess charge (see Article 29).

(4) A ticket broker buys from a theater for 75 cents a ticket to a seat of which that is the established price. On making this purchase he pays the theater a tax of 8 cents. He resells the ticket for \$1.50. In this case the admission tax to be collected by him from the person to whom he resells the ticket and to be returned and paid over to the collector (see Article 63) is 7 cents (15 cents minus 8 cents). It is not 8 cents (as it would be if it were based on the amount of the 75 cents additional paid for the ticket). The ticket broker can also, if he desires, collect and keep 8 cents more to serve as a refund of the 8 cents tax he has already paid the theater.

(5) A season ticket, good for general admission to 30 performances, the price of general admission to each of which is 25 cents, is sold for \$7.50, which is no reduction from the single admission price. As the tax on each admission is 3 cents ("1 cent for each 10 cents or fraction thereof of" 25 cents) the total tax payable on the season ticket is 90 cents (30 times 3 cents), and not 75

¹ But see example 2, Article 9.

² Provided that the admission is not had nor any ticket delivered until the payment of the final installment. If such admission is had or a ticket delivered at any time before the payment of the final installment of the price of the ticket, the balance of tax is payable upon such admission or delivery of ticket. See Note 1 under Article 57.

³ See example 7.

⁴ See example 4; example 2, Article 30.

cents, as it would be if the tax were figured on the total amount paid for the season ticket rather than on the amount paid for each separate admission.¹

(6) A certain person goes with four friends to a 5-cent moving-picture house and purchases five tickets of admission paying 25 cents for them and offers 3 cents in payment of the tax. He must pay 2 cents more, for the tax is not 3 cents but 5 cents, being 1 cent for each admission.

(7) A child arranges to buy a 10-cent ticket to a moving-picture theater by paying 1 cent a day, the ticket to be delivered on the payment of the last installment. In this case a tax of 1 cent is due on the payment of the first cent and no further admission tax whatsoever is due.

(Note: See paragraph 590 for later ruling for computing tax on admission by season ticket or subscription, T. D. 2975).

[¶ 570] Art. 5. **Meaning of "to any place."**—The tax under these provisions of the Act is on "the amount paid for admission to any place." "Place" is a word of very broad meaning, and is not defined or otherwise limited by the Act. But the basic idea it conveys is that of a definite location. The phrase, therefore, "to any place" does not narrow the meaning of the word "admission," except to the extent that it implies that the admission is to a definite location on or beneath the surface of the earth, or to a structure whose location with relation to the earth is definitely fixed, at least temporarily. Places of amusement obviously constitute the most important class of places, admission to which is subject to this tax.

Examples.—(1) Each of the following is a "place" within the meaning of the Act:

- (a) An outdoor amusement park, and such attractions therein as a scenic railway, a merry-go-round, a roller coaster, a Ferris wheel, a toboggan slide, a bump-the-bumps, a whip, a dip-the-dips, a speed-o-plane, a hilarity hall, and a dance hall. (Under the Revenue Act of 1917 "outdoor general amusement parks," and also such attractions therein as did not charge over 10 cents admission, were expressly exempted from the Tax on Admissions, but there is no such exemption under the Revenue Act of 1918.)²
- (b) An observation tower on top of a high building.
- (c) A grandstand built on private property for the purpose of viewing a parade passing in the public street or a baseball game in an adjoining baseball park.³
- (d) A cave.
- (e) A space inclosed by a bathing establishment in which are seats from which to watch the bathing along the beach.⁴
- (f) A floating theater operating along a river, anchored or moored for each performance.
- (2) None of the following is a "place" within the meaning of the Act:
 - (a) A railway car (unless rendered stationary by sidetracking or removal from track).⁵
 - (b) A street car (unless rendered stationary by sidetracking or removal from track).
 - (c) A steamboat (unless anchored or moored).
 - (d) A sight-seeing automobile.
 - (e) A railroad train or a boat following the course of a boat race.

¹ See note 6 under Article 4. For subscription ticket at reduced rate, see example 2, Article 23.

² Second ride, see example 1, Article 9; double ticket, see example 3, Article 13.

³ Seat or room in hotel, see example 13, Article 10; seat in window, see example 5, Article 8.

⁴ Beach chair, see example 3, Article 8; additional time, see example 2, Article 9.

⁵ Parlor car, see example 6, Article 8.

(3) Where an admission charge is made to a dancing pavilion and an additional charge is made, in the case of each dance, for admission to the dancing floor within this pavilion, admission to the dancing floor (as well as admission to the pavilion) is admission to a "place" within the meaning of the Act.¹

(4) A tennis tournament is a contest and not a "place" and, therefore, an amount paid by a player to "enter" such a tournament is not "paid for admission to any place" within the meaning of the Act. On the other hand, the grandstand at the tennis tournament is a "place" within the meaning of the Act.²

[¶ 571] Art. 6. **Meaning of "admission"—Owner or lessee of place.**—The tax is on "the amount paid for admission to any place." "Admission" primarily means, of course, being allowed to enter by some one. There is no "admission" involved, therefore, where the person entering is himself the sole or a joint owner or lessee of the place. He has a right to enter without being admitted by anyone.³

Examples.—(1) Two brothers are sole owners of a lot and a building thereon which contains a moving-picture theater. One of them is proprietor and manager of this theater, and in the course of management enters it frequently. The other brother, though having no connection with the theater (other than as owner of the structure), also enters it from time to time. Such entering by them is not an admission within the meaning of the Act.

(2) Neither the directors nor the stockholders of a corporation⁴ owning a place can be considered as owners within the meaning of this article.

[¶ 572] Art. 7. **Meaning of "admission"—Clubhouse or grounds.**—Another application of the principle stated in Article 6, is where the members of a club, by reason of their membership, have the right to enter at will into the clubhouse or grounds and the club has an entertainment or exhibition at such clubhouse or grounds and recognizes the right of its members to enter by making no charge to them. In such a case the entering of a member to the club into the place where the entertainment or exhibition is given is not an admission within the meaning of the Act, because such member has the right to enter there by reason of membership in the club. (See also articles 11 and 14.)

Examples.—(1) A tennis club holds a tournament at its club grounds, charging nonmembers an admission fee of 50 cents but making no charge to club members. As the entering of club members in such a case is not an admission within the meaning of the Act, such members are not taxable under the free-admission provision of the Act.⁵

(2) A social club gives a dance at its clubhouse, charging invited guests \$1 per couple but making no charge to club members. As the entering of club members in such a case is not an admission within the meaning of the Act, such members are not taxable under the free-admission provisions of the Act.⁶

[¶ 573] Art. 8. **Meaning of "amount paid for admission"—Seats, tables, etc.**—The tax is on "the amount paid for admission to any place." "Admission" primarily means being allowed to enter. But the Act expressly provides that it shall also include being allowed to use "seats and tables, reserved or otherwise, and other similar accommodations." A charge for their use, therefore, in any place, must be treated as a charge for admission to that place,

¹ "Skate rental," see example 1, Article 10; "instruction" charge, see examples 7 and 8, Article 10.

² Club memberships, see example 1, Article 7; rental of tennis court, see example 3, Article 10.

³ Co-operative parties, see Article 11; lease of box or seat, see Article 25.

⁴ Directors as employees, see example 1, Article 21.

⁵ Entering tournament, see example 4, Article 5; rental of tennis court, see example 3, Article 10;

co-operative parties, see Article 11; club memberships, see Article 14.

⁶ Hat check fee, see examples 9 and 15, Article 10; where tickets are sold, see example 3, Article 11; rental of place, see Article 64; couple ticket, see example 10, Article 17; club memberships, see Article 14; where held in rented hall, see example 8, Article 24.

subject to the taxes imposed by section 800 (a), and not as a rental charge, which (see Article 10) would escape those taxes. So an amount paid for the right to use a reserved seat in a theater or circus, a table in a roof garden, or the like, is equally taxable with a charge for being allowed to enter the place itself. This is true whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge proper to form a single charge, or is separate and distinct from an admission charge, or is itself the sole charge.

Examples.—(1) Where 75 cents is paid for general admission to a circus and then 50 cents is paid for a reserved seat, the latter amount, equally with the former, is “paid for admission” within the meaning of the Act.¹

(2) Where \$10 is paid to a hotel to reserve a table for celebrating New Year’s eve, this amount is “paid for admission” within the meaning of the Act.²

(3) An amount paid for the use of a swinging beach chair at a coast resort is “paid for admission” within the meaning of the Act.³

(4) An amount paid for the use of a rolling or movable chair to be moved at the will of the occupant, no definite limits of space being set, is not “paid for admission to any place” within the meaning of the Act. See Article 5.

(5) An amount paid for the use of a seat in a window to view a parade is “paid for admission” within the meaning of the Act.⁴

(6) While under Article 8, the use of a seat must be considered an “admission” within the meaning of the Act, an amount paid for a seat in a parlor car is not an “amount paid for admission to any place,” because a parlor car is not a place within the meaning of the Act. (See Article 5.)

[¶ 574] Art. 9. **Meaning of “amount paid for admission”—Charge for additional time.**—The tax is on “the amount paid for admission to any place.” “Admission” primarily means being allowed to enter. But where the original admission gives the right to remain in a place, or to use a seat, table, or other similar accommodation for only a limited time, and an amount is paid for the same right for an additional time, this amount is clearly an “amount paid for admission” within the meaning of the Act.

Examples.—(1) Where a tax is payable on admission to a roller coaster or merry-go-round the charge collected for a second ride is an “amount paid for admission” within the meaning of the Act.⁵

(2) Where 50 cents is paid for the right to occupy for one hour a swinging beach chair at a coast resort and 25 cents is later paid for the right to remain in the chair for another hour, the latter amount, equally with the former, is “paid for admission” within the meaning of the Act. In such case each of these amounts is to be treated as a separate admission in computing the tax.⁶

[¶ 575] Art. 10. **Meaning of “amount paid for admission”—Rental or services.** (As amended T. D. 2949, dated Nov. 15, 1919.)—The tax is on “the amount paid for admission to any place.” So, where a charge made, though imposed on a person admitted to a place, is not in fact or name a charge for admission but is for the rental of real or personal property⁷ or for personal

¹ Reduced rate on combined tickets, see example 8, Article 23.

² See example 2, Article 27.

³ Use for additional time, see example 2, Article 9.

⁴ As to a room rented for a similar purpose see example 13, under Article 10.

⁵ As “place” see example 1 (a), Article 5; double ticket, see example 3, Article 13.

⁶ Original payment for admission, see example 3, Article 8; for computation, see Article 4.

⁷ These terms are used here as not including “seats and tables * * * and other similar accommodations.” (See Article 8.)

services¹ the tax does not apply. If a charge imposed on a person admitted to a place is called a charge for admission it will be considered to be wholly for admission and not in any part for rental or services. To be considered a charge for rental or services it must be called such.² But merely calling it such does not necessarily determine its character as a charge for rental or services. Other conditions must be satisfied. These conditions are embodied in the following table and paragraph, which should be used to determine the true character of a charge so imposed which is called a charge for rental or services.²

DETERMINATION OF TRUE CHARACTER OF A CHARGE CALLED A CHARGE FOR RENTAL OR SERVICES²

A. Where there is a single undivided charge.

A single undivided charge imposed on a person admitted to a place.

Which is called —	In case—	Within the meaning of the Act, is paid for—
A charge for rental or services. ²	<p>Such rental or services are involved and the charge is not clearly unreasonable for such rental or services</p> <p style="text-align: center;">and</p> <p>Other persons who do not desire to and do not rent the property or avail themselves of the services are either..</p>	Rental or services, as the case may be.
	Admitted free or Not admitted at all.	
	2. Other persons who do not desire to and do not rent the property or avail themselves of the services pay a lesser charge.	Admission, to the extent of that lesser charge—the balance is considered to be paid for rental or services, as the case may be.
	3. It (or an equal charge) is imposed irrespective of whether or not the person desires to or does rent the property or avail himself of the services.	Admission.
	4. There is no such rental or services really involved or the charge is clearly unreasonable for the rental or services involved.	Admission.

B. Where there are separate and distinct charges.

In cases where there is a charge (whether called an admission charge or not) generally applicable to persons admitted to a place, and also one or more additional charges called charges for rental or services, as the case may be, and these respective additional charges are only imposed on such persons who desire to and do rent the property or avail themselves of the services; then, unless the comparative amounts of these charges are clearly unreasonable, only the amount paid for the generally applicable charge is "paid for admission" within the meaning of the Act.

¹ The so-called services of a ticket broker, in procuring and selling an admission ticket, in so far as they can be considered services at all, are properly included within the meaning of "admission" and are not "services" within the meaning of this article.

² It is not necessary that the charge be called in terms a "rental" or a "services" charge, but it must be called by some name that clearly implies that it is a charge based on rental or services of some kind or other.

Examples.—Tax on the price paid for admission to a skating rink.

The building or inclosure in which a skating rink is located and the skating surface proper are separate “places” within the meaning of Section 800 (a) of the Revenue Act of 1918.

The amount paid as a skate rental charge is not subject to the admission tax if it does not exceed the sum of the amounts paid for admission to the skating rink and the skating surface, and if no skating rental charge is made to persons using their own skates.

Where a person using his own skates is required to pay an amount in excess of the charges made for admissions to the skating surface, the charge made on a person using his own skates is the established price for admission to the skating surface.

The following example is added to illustrate the amount on which the tax is computed:

(1) “Where a charge is made for admission to a building or inclosure in which a roller or ice skating surface is located, such charge is taxable the same as an admission to any other place of amusement, regardless of whether or not persons paying the charge are also furnished with skates and admitted to the skating surface without the payment of an additional amount. This is true, even though persons using their own skates are charged a less amount or are admitted free. Therefore, where the manager of a skating rink makes a single charge of 50 cents for admission to a building or inclosure, the skating surface, and for the use of skates, the tax to be collected in this case is 5 cents. The same tax would be payable on this charge if it covered admission to the building or inclosure only.

“The building or inclosure in which the skating surface is located and the skating surface proper are separate places within the meaning of the law. Therefore, where single charges are made for admission to the building and the skating surface, the latter charge, including the rental of skates, both charges are taxable as amounts paid for admission. For example, if a charge of 25 cents is made for admission to the building or inclosure and another charge of 25 cents covering rental of skates and admission to the skating surface, the tax to be collected is 3 cents on each charge.

“Where bona fide separate charges are made for admission to the skating rink, skating surface, and for rental of skates, and persons using their own skates are required to pay the first two charges and no more, the tax attaches only with respect to the admission charges. For example, where 20 cents is charged for admission to the rink, 10 cents for admission to skating surface, and 30 cents for skate rental, tax would not attach to the skate rental charge.

“The separate charge for the use of skates will be regarded as bona fide only where it does not exceed the sum of the amount expressly charged for admission to the skating rink and the skating surface. For example, where 10 cents is charged for admission to the rink, 10 cents for admission to the skating surface, and 25 cents for skate rental, the skate rental cannot be regarded as bona fide separate charge. Therefore, tax of 1 cent must be paid on the charge for admission to the rink, and tax of 4 cents on the sum of the charges for admission to the skating surface and the rental of skates.

“Where no charge is made for admission to the skating rink and a single charge covers rental of skates and admission to the skating surface, tax attaches to the entire amount of this charge.

“Where charge is made for admission to the skating rink and separate charges are made for rental of skates and admission to the skating surface, the

admission charges only are taxable provided the charge for rental of skates does not exceed the admission charges, and provided persons using their own skates are required to pay the admission charges and no more.

"Whether a charge is made for admission to the rink or not, where persons using their own skates are required to pay more than the charge for admission to the skating surface, or more than the charge made for the rental of skates and admission to the skating surface, the charge made to persons using their own skates is the established price for admission to the skating surface, and tax on the amount of this charge must be collected from each person admitted to the skating surface, whether renting skates or using his own skates. For example, where 10 cents is charged for admission to the rink (or where no charge is made for admission to the rink), 10 cents for admission to the skating surface and 10 cents for rental of skates, but a person using his own skates is required to pay 25 cents, the established price for admission to the skating surface is 25 cents."

(2) A certain golf club charges guests and other nonmembers a "green fee" of \$2 for each time they play on its course. As this amount is paid for the right to enter on the course and use it along with other people playing at the same time, it is clearly not paid for rental but for "admission" within the meaning of the Act. (See 4 in Table A above.)¹

(3) In a certain amusement park is a tennis court which is rented for 50 cents per hour. As the person paying this amount has the sole and entire right to the use of the court during the hour, this charge is clearly a rental charge for the use of the court and is not "paid for admission" within the meaning of the Act. (See 1 in Table A above.)

(4) A certain swimming pool admits people to the galleries of the pool free, but charges 50 cents "for a swim." Payment of this charge secures admission to the main floor and to the pool itself, and the use of a dressing room, bathing suit, and towel. This 50-cent charge must be paid by everyone using the pool² whether he furnishes his own bathing suit and towel or not. In this case the whole of the 50 cents is clearly an "amount paid for admission" within the meaning of the Act. (See 3 and 4 in Table A above.) But, if a reasonable part of this charge (say 5 cents) was called a "towel fee" and was only charged such persons as rented a towel, another reasonable part (say 10 cents) was called a "bathing-suit fee" and was only charged such persons as rented a suit, and the remainder of the charge was called an "admission fee," then only the latter amount would be considered to be "paid for admission" within the meaning of the Act. (See paragraph B above.)

(5) A certain bathing establishment at a coast resort makes a "rental" charge of 50 cents, for which it furnishes a bathing suit, towel, and a dressing room. The patrons bathe in the ocean from an uninclosed beach. Here the 50 cents is clearly for rental and is not "paid for admission" within the meaning of the Act. (See 1 in Table A, above.)

(6) A 50-cent charge is made to everyone going out on a certain fishing pier. This charge covers the use of fishing tackle. No one is allowed on the pier unless he fishes and everyone must pay the full charge whether he uses his own fishing tackle or not. In this case the amount paid is clearly "paid for admission" within the meaning of the Act. (See 3 and 4 in Table A, above.)³

(7) A certain dancing school charges admission and an additional fee, which is reasonable, for "instruction." It is only imposed on persons desiring dancing instruction. This instruction charge is evidently paid for services and

¹ Clubhouse or grounds, see example 1, Article 7; club membership, see Article 14.

² As "place," see example 3, Article 5.

³ See example 15 under this article.

truly a cooperative party of the above character. But if any guests are required or allowed to pay or if any profit is sought or divided, then any amounts so is not "paid for admission" within the meaning of the Act. (See paragraph B, above.)

(8) A certain dancing school has but a single price for admission. Anyone admitted may dance and also, without further charge, receive instruction, if desired. In this case the whole amount charged must be treated as "paid for admission" within the meaning of the Act. (See 3 in Table A, above.)

(9) The charge for "admission" to a certain dance is only \$1 per person, but each person is charged by the management a "hat-checking fee" of 50 cents. This checking charge is so clearly unreasonable that the whole amount, \$1.50, must be treated as an "amount paid for admission" within the meaning of the Act. (See 3 and 4 in Table A, above.)¹

(10) Where 25 cents an hour is charged for the use of a rowboat on a pond in an amusement park, this amount is clearly paid for rental and is not an "amount paid for admission" within the meaning of the Act. (See 1 in Table A, above.)

(11) Where a child pays 10 cents for a "ride" around a track on a pony, the amount paid is clearly for the rental of the pony or the services of the attendant, or both, and is not an "amount paid for admission" within the meaning of the Act. (See 1 in Table A, above.)¹

(12) A certain bath establishment makes a charge of \$1¹ for a "Turkish bath" and does not allow anyone not taking such a bath to enter the Turkish bath section of its establishment. This charge is clearly not an "amount paid for admission" within the meaning of the Act. (See 1 in Table A, above.)

(13) An amount paid for the use of a seat in the window of a hotel room, in order to watch a parade, would clearly be an amount paid for rental were it not that section 800 (c) of the Act expressly provides that the use of "seats and tables, reserved or otherwise, and other similar accommodations" is included in the meaning of "admission" as used in the Act. In view of this provision of the Act such an amount must be treated as "paid for admission." (See Article 8, and particularly example 5.) If the whole room were rented, however, it is clear that the amount paid for it would not be "paid for admission."²

(14) A certain roller-skating rink makes a charge of 60 cents for "skate rental" to everybody who skates, no one of whom is allowed to use his own skates. Persons not skating are admitted for 50 cents. In this case a person skating must pay a tax of 5 cents, for 5 cents of the charge imposed on him must be considered to be "paid for admission." (See 2 in Table A, above.)³

(15) A certain dance hall makes no charge for "admission," but forces everyone entering to pay 25 cents for "hat check privilege." The amount paid is clearly an "amount paid for admission." (See 3 and 4 under Table A, above.)⁴

[¶ 576] Art. 11 (as amended by T. D. 2964, approved Jan. 14, 1920). **Meaning of "amount paid for admission"—Cooperative parties.**—An application of the principle stated in Article 10 is where a group or organization of people cooperate in giving a dance or other entertainment to themselves, sharing the expense among themselves. In such a case, as the amount paid by each is for his share of the services and rental constituting the expense, it cannot properly be considered as paid for admission, and is, therefore, not taxable as such. The mere fact that a limited number of persons, outside of the group or organization, are invited to attend as free guests or that the individual share of the expense is fixed at an even figure, will not make the tax apply if the affair is

¹ See Footnote 3, page 12.

² See example 1 (c), Article 5.

³ See also example 1 under this article.

⁴ See example 9 under this article.

paid by the organizers or guests cannot be considered as payment of a share of the bills for services and rental constituting the expense, but are clearly amounts "paid for admission," subject to the provisions of the Act. Where a banquet or dinner is held, under the auspices of any person, group or organization other than the proprietor of a place maintained wholly or in part for such purposes, a charge per cover being made in advance, fixed at such an amount as will approximately cover the expense, including incidentals such as music and the entertainment of a few guests who are not allowed to pay, such charges, being principally amounts paid for food consumed, are not amounts paid for admission within the meaning of the Act.²

Examples.—(1) A men's bowling club decides to give a dance on a certain night, and circulates a list to be signed by all members who care to attend. On securing the names and estimating the expenses, the share of each member is fixed at \$2. (No charge, of course, is to be made to the partners brought by the members.) The dance is held without the use of tickets. The expenses proved to be less than expected, and there is a balance left on hand. This balance is refunded pro rata to those who paid \$2. In this case it is plain that the amounts paid by the members are not "paid for admission" within the meaning of the Act.³

(2) A young man's club conducts a series of monthly dances and through friends and acquaintances establishes a mailing list of persons to whom invitations are sent each month. A charge of \$2 is imposed on each couple who attend, though no tickets are used. That amount is clearly an "amount paid for admission" within the meaning of the Act.⁴

(3) A certain social club sends out to its members and certain nonmembers invitations and tickets to a musicale, the price of the tickets being \$1.50 each. Such a ticket is necessary to secure admission to the musicale. In this case the \$1.50 is clearly an "amount paid for admission" within the meaning of the Act.

(4) A group of 10 young men desire to give a dance and propose to defray the expenses by selling 100 \$2 tickets. Each member agrees to sell 10 tickets or to pay the full price thereof. A payment of \$2 for such a ticket is clearly an "amount paid for admission" within the meaning of the Act.

[¶ 577] **Art. 12. Meaning of "amount paid for admission"—Rental of entire place.**—Another application of the principle stated in Article 10, is where a person or organization acquires the sole right to use any place or the right to dispose of all the admissions to any place for one or more occasions. Such a transaction, whether in name a rental or not, is in substance a rental of the entire place and of the attraction, if any, and the Tax on Admissions does not apply to it. (But when such person or organization disposes of admissions to the place it occupies the position ordinarily occupied by the proprietor of the place. See Article 64.)¹

Examples.—(1) A local lodge, desiring to entertain the delegates to a national convention of its order, contracts with a theater to pay \$1,200 for its entire seating capacity for a particular performance in the course of a long run of an attraction. This transaction is in effect a rental of the theater and the attraction for the performance and the \$1,200 is not an "amount paid for admission" within the meaning of the Act. As to the position occupied by the lodge with respect to admissions to the performance in question, see Article 64.¹

(2) A certain public dance hall, where public dances are held every night by its proprietors, is rented by them to a certain social club for a certain night

¹ Tax on excess charge, see Articles 20-31, particularly example 6, Article 30; tax on reduced rate, see example 7, Article 23; necessity for tickets, see Article 48.

² Clubhouse or grounds, see Article 7; club memberships, see Article 14.

³ Rental of hall, see Article 64; clubhouse or grounds, see example 2, Article 7; couple ticket, see example 10, Article 17.

⁴ Couple ticket, see example 10, Article 17; rental of hall, see Article 64.

for \$150. The club charges its members the same fee as that charged by the proprietor of the hall on other nights. The \$150 is not an "amount paid for admission," but the amount paid by each member is an "amount paid for admission," within the meaning of the Act.¹

(3) See example 3, under Article 10, for that example properly falls under this article also.

[¶ 578] Art. 13. **Meaning of "amount paid for admission"—purchase of property.**—The tax is on "the amount paid for admission to any place." In some cases entrance to a place is granted only to such persons as have made a purchase of property of some sort, which must be exhibited to secure admission, but which is not taken from the holder on his admission. In such a case, unless the sale appears, by reason of the undesirability or lack of value of the article, to be a mere subterfuge, the amount paid for such article is not an "amount paid for admission" within the meaning of the Act.²

Examples.—(1) Where a person, in order to be admitted to an entertainment, is required to purchase a 25-cent "thrift stamp," which is to remain his property, the amount paid for the stamp is not an "amount paid for admission" within the meaning of the Act.

(2) Where a hotel makes it a requirement for entrance to its cabaret that the patron purchase a 50-cent food check, which is good for that amount in payment of his bill for food thereafter ordered in the cabaret, the amount paid for this check is not "paid for admission" within the meaning of the Act.³

(3) A certain amusement park company makes the purchase of two 5-cent tickets a requirement of admission to its park. These tickets are kept by the purchaser and can be used by him in payment of any charges for admission to attractions within the park. Within the meaning of the Act, the amount paid for these two tickets is not "paid for admission" to the amusement park but is "paid for admission" to the particular attractions for which they are used. (Unless the amusement park company is exempt from tax there will be tax of 1 cent on each of these tickets—see Article 4—to be paid at the time they are paid for. This tax applies even if such a ticket is good in payment of a nontaxable rental—for example, of a row boat—as well as for a taxable admission to an attraction, because it can not be told for which it will be used. But if the park company sells two distinct kinds of 5-cent tickets, one kind good for a taxable admission to an attraction and the other not, then the 1 cent tax will only apply on the former kind, and if the person entering the park takes two tickets of the latter kind, then he will have no tax to pay on them.)

See also example 3 under Article 15.

[¶ 579] Art. 14. **Meaning of "amount paid for admission"—Memberships.**—The tax is on "the amount paid for admission to any place." It is clear that an amount paid to become regularly entitled to the privileges of a club or other organization, as member or otherwise, is not an "amount paid for admission," even though one of the privileges be the right to enter a clubhouse, club grounds, gymnasium, swimming pool, or the like. But where the chief or sole privilege of a so-called membership is a right of admission to certain particular performances or to some place on a definite number of occasions (as contrasted with a more or less unlimited right to enter a clubhouse or other place as many times as desired during a year or some other period), then the amount paid for such so-called membership is an "amount paid for admission" within the meaning of the Act.⁴ A tax is levied under certain circumstances on amounts paid as initiation fees or as dues or membership fees to certain classes of clubs or organizations, and also upon life members of such

¹ See Article 64; clubhouse or grounds, see Article 7; memberships, see Article 14.

² For contributions, see Article 15.

³ But see also example 5, Article 27.

⁴ Clubhouse or grounds, see Article 7; cooperative parties, see Article 11.

clubs, by section 801 of the Revenue Act of 1918. For this tax, called the "Tax on Dues," see Part 2 of these Regulations (paragraph No. 653).

Examples.—(1) Where one of the privileges of membership in a tennis club is the right of free admission to its grounds at all times, including the days on which the annual tennis tournament is in progress, neither the dues paid by such a member nor any part thereof can possibly be considered an "amount paid for admission" to such tennis tournament within the meaning of the Act.¹

(2) Where a so-called membership in a musical club costs \$10 a year and the chief or sole privilege of membership is the right to a ticket to each of five musical entertainments, the amount paid for this so-called membership is an "amount paid for admission" within the meaning of the Act.²

(3) A certain athletic club has "swimming memberships," with annual dues of \$15, giving certain privileges, chief among which is the right to use the club swimming pool on any Tuesday, Thursday, or Saturday during the year. In this case neither the \$15 nor any part thereof can be considered as "paid for admission" within the meaning of the Act.

(4) The same athletic club has "special swimming memberships," which cost \$5, and entitle the member to 20 "swims" in the club swimming pool. The club also admits persons to its swimming pool for a single "swim" on payment of 35 cents. Both this \$5 and this 35 cents are amounts "paid for admission" within the meaning of the Act. (But as such \$5 payment is doubtless at a reduced rate, any tax in this case would be based on the established price of each such admission. See Article 23.)³

(5) A certain professional baseball club sells for \$40 what it calls an "annual membership," the chief privilege of which is the right to be admitted to the grand stand at each of the games scheduled for the home grounds. This \$40 is clearly an "amount paid for admission" within the meaning of the Act. (But as such payment is doubtless at a reduced rate, any tax in this case would be based on the established price of each such admission. See Article 23.)

[¶ 580] **Art. 15. Meaning of "amount paid for admission"—Contributions.**—The tax is on "the amount paid for admission to any place." "Amount paid for admission" means amount necessarily paid because required for admission. In other words, an amount not required for admission, but given voluntarily, before or after admission, is not taxable.⁴

Examples.—(1) Where everyone attending an exhibition given in a public park, freely open to the public, is requested during the course of the performance to make a contribution to the expenses of the exhibition and a tag is given to each contributor, an amount so contributed is not "paid for admission" within the meaning of the Act.

(2) Where oil paintings are exhibited without any entrance fee being charged but at the close of the explanatory lecture a statement is made that contributions to pay the expenses of the exhibition will be cheerfully received, an amount so contributed is not "paid for admission" within the meaning of the Act.

(3) A certain baseball game is played on Sunday, in a State where amusements charging admissions are not allowed on that day, and, therefore, admission is made free to all, but, in order to make up as far as possible for the lack of admission fees, score cards are sold at an excessive price to such as will buy.

¹ Clubhouse or grounds, see example 1, Article 7.

² As a lease of box or seat, see example 4, Article 26; as to tax on full rate, see example 5, Article 4; as to tax on reduced rate, see example 2, Article 23.

³ See example 4, Article 10.

⁴ For purchase of property, see Article 13.

An amount paid for such a score card is not "paid for admission" within the meaning of the Act.¹

[¶ 581] Art. 16. **Meaning of "amount paid."**—The tax is on "the amount paid for admission to any place." This amount will, of course, ordinarily be paid in the form of money. Services rendered, advertising space furnished, or property supplied in exchange for admission must be considered, however, as an "amount paid for admission" within the meaning of the Act. In any such case payment for the admission will be deemed to be made at the time of the delivery of a ticket or card of admission (whether such ticket or card directly entitles the holder to admission or merely entitles him to secure another ticket or card which does), or in case no ticket or card is used (see Article 48), then at the time of the admission itself. (See Article 57, and particularly note 1.) Where services, advertising space, or property is used, in whole or in part, instead of money, in paying for admission, the payment will be deemed to be a payment at the established price of such admission (see Article 17), unless it clearly appears that the full value of that price has not been paid.

Examples.—(1) John Smith, in return for consenting to have a circus lithograph hung up in his store window for two weeks, receives a pass. On the day of the circus he presents this pass and is given a 75-cent ticket, which admits him to the circus. In this case it must be considered that the full amount of 75 cents has been paid for this admission at the time of the delivery of the pass, just as if the payment had been then made in cash. (Moreover, the pass must comply with the provisions of Articles 50-51.)

(2) Samuel Johnson, a furniture merchant in a small town, furnishes a traveling theatrical company a certain furniture for use on the stage during its single performance, and in return receives two \$1 tickets to the performance. These tickets must be considered to have been paid for at the time of delivery at the rate of \$1 each, just as if payment had then been made in cash. If these tickets were given only in part payment for the use of the furniture, and the theater in further payment advertised the owner's business, and also paid him an additional sum in cash, this would not affect the result.

[¶ 582] Art. 17. **Meaning of "established price of an admission."**—By the "established price of an admission" on any occasion is meant the full-rate price fixed, by the person controlling such price, at the beginning of the first sale or distribution of tickets valid on that occasion or (if no tickets are used) at the time of opening the doors for admission on that occasion, as the price to be charged for that admission¹ or an admission to a similar accommodation on that occasion. The person in control has, of course, the power to fix the price to be actually charged for admission. He has, therefore, the power to determine the established price. But as established price is a matter of substance, not of name, the mere fact that he calls a price the "established price" does not make it such. Nor is the price he decides to charge for a particular admission necessarily the established price for that admission. If he arbitrarily sets different prices on admissions, under similar circumstances, to accommodations in all substantial respects similar, these different prices will not be the established prices of the respective admissions for which they are charged, but the highest price among them will be the established price of all such admissions. The established price of admission can, of course, be uniform or can vary in accordance with the accommodations to which admission is granted, increasing from the price of a mere general admission through various grades of accommodations up to the best accommodations. Any scale of prices, apparently adopted in good faith, in which the prices increase regularly with the increase of accommodation, will be considered to show the true established

¹ For meaning of "admission," see Articles 6-15, particularly Articles 8-9.

prices of admission to such respective accommodations; but the variation of prices must be regular and based on a real difference of accommodation and not merely arbitrary. In such a scale general admission or admission to any number of adjoining grades of the poorest accommodations offered can have an established price of \$0.00. Moreover, in cases where there is a single uniform established price of admission it can be \$0.00. The established price of an admission need not be the same for different attractions or even for different performances of the same attraction; but when tickets have once been put on sale, or free distribution of them has commenced, or (if no tickets are used) when the doors have once been opened, for a particular performance, the price of admission for every accommodation at that performance has been established. Established prices of admission once so adopted are not affected in the slightest by the mere sale of admissions at prices different from the ones so established. Nor can established prices once so adopted for any occasion be increased in any way whatsoever for that occasion. They can be reduced, however, but only by complying with the following conditions: (1) Any reduction of established price must include all admissions of that particular established price and must grant an equal reduction in the case of each; (2) such reduction must not result in setting a lower price on admission to certain accommodations than is charged on that occasion under similar circumstances for admission to accommodations which are in all substantial respects similar; (3) public notice must be promptly given for the reduction and of the fact that every person having paid for admission at the former established price can secure a refund, at any reasonable time, of the amount he paid in excess of the new established price; and (4) such refunds must be actually made promptly on request.¹ The established price of admission under similar circumstances to similar accommodations is the same for all persons. The mere status as to sex or the like of the purchaser or user of an admission, even though favored by the seller of the admission² and privileged under the Act, can not affect the established price of that admission. In other words, where an admission is granted free or at a reduced rate (for example, to a child) the established price of the admission is not the reduced-rate or free price but the full-rate price charged other persons for the same or similar accommodations.

Examples.—(1) A certain theater for most attractions puts a price of \$1 on the first four rows in its balcony, but in the case of a coming attraction it decides, before any seats for that attraction are put on sale, that the price of every seat in those four rows shall be \$1.50. In this case \$1.50 is the established price of each admission to a seat in one of those rows for that attraction.³

(2) If in the previous case the attraction had a long run and it was decided after the course of several weeks to increase the price of the seats in the first four rows of the balcony to \$2 each after the fifth week, and this decision was made before any seats for the sixth or later weeks of such attraction were open for sale or distribution of any kind, then the established price of each admission to such four rows for any performance of such attraction, from and after the first performance of the sixth week, would be \$2.³

(3) A moving-picture theater charges 20 cents admission, and this entitles the person admitted to sit in any seat in the house. Children under 12, how-

¹ In case of such a refund the difference in admission taxes between the original and reduced established prices should also be refunded. See Article 67.

² Where, however, because of the essential character of the affair to which admission is granted certain persons are admitted free under special circumstances directly associated with that character and no charge is made to any persons admitted under those particular circumstances, then the established price for the admission of such persons under such circumstances is \$0.00, even though the established price of admission of other persons admitted under other circumstances on the same occasion may be more than \$0.00. Apparently the single case falling under this note is that illustrated by example 10 under this article.

³ See example 8 under this article, and example 1, Article 29.

ever, are admitted at half price. In this case the established price of admission for the whole theater is 20 cents for everybody, including children under 12.¹

(4) A certain person arranges a series of dances for the purpose of making money for himself. No tickets are used, the price of admission being collected at the door. For the first dance most of those attending are charged \$2, but some friends are allowed in at a lower price. His plan was to charge the same amount for the second dance, but a few minutes before that dance began he decided to increase the price to \$3, this decision being reached before anyone was admitted to the hall. In the case of the first dance the established price of admission was \$2. In the case of the second dance it was \$3.²

(5) The proprietor of a theater, seeking to evade the provisions of the Revenue Act of 1918, declares the "established price" of four seats on the middle aisle of the orchestra of his theater to be \$0.00, and admits certain friends of his to them free at every performance. The established price of all other seats in the orchestra is admittedly \$2. In this case the true established price of each of these four seats is itself \$2.³

(6) A proprietor of a theater has the practice of selling no tickets for the gallery on Monday nights, but throwing it open free, as a regular custom, to school children. The established price of admission to the gallery in this case is \$0.00. If the balcony, as well as the gallery, were regularly thrown open free on such occasions, the established price of admission to it would also be \$0.00. If, however, the seats in the balcony were put on sale for \$1, and the orchestra and gallery were thrown open free on such occasions, while the established price of admission to the gallery would be \$0.00, the established price of admission to the orchestra would be at least \$1.⁴

(7) Where the fixed prices for all of the seats in a certain theater are always 50 cents more on Saturday night than on other occasions, the established prices of admission for Saturday night are that much greater than the established prices of admission for other nights.

(8) A professional baseball club, the admission to whose grandstand is \$1, puts its tickets on sale two weeks in advance. Its team having been particularly successful during a certain week, it announces on Monday that the price of all tickets for the following Sunday's game will be increased to \$1.50. These tickets had been on sale for a week and several hundred had been sold at the lower price of \$1. The established price of admission to this grandstand for that occasion remains \$1 in spite of the increase in the price actually charged for tickets.⁵

(9) A certain dance is given, for admission to which every man is charged 50 cents and every woman 25 cents. In this case the established price of admission is 50 cents, the woman being admitted at a reduced rate.⁶

(10) A certain social club holds a dance and sells to men, members and friends, tickets good for admission of a "couple" for \$2. This is the only kind of ticket sold. A ticket will admit a man and woman or a man alone, but not a woman alone. In this case the established price of admission of a man, the only sex allowed to be admitted alone, is \$2; and for a woman, coming (as she must) as the partner of a man, is \$0.00. This difference of established price is only possible because of the nature of the occasion, and of the

¹ Tax on children's tickets, see example 2, Article 18.

² Co-operative party, see Article 11; rental of place, see Article 64; couple tickets, see example 10 under this article.

³ Tax on free admissions, see Article 24; resale of free pass, see example 10, Article 24.

⁴ See example 4, Article 24.

⁵ See examples 1-2 under this article and example 1, Article 29; tax on excess charge, see Article 29.

⁶ Tax on reduced rate, see example 9, Article 23.

fact that no person admitted under the special circumstances under which a woman is admitted is subject to any charge for admission.¹

(11) A municipality erects a grandstand to be used to view a parade of returning soldiers and distributes all the tickets free to officials and families of the soldiers. Some of these tickets get into the hands of ticket "scalpers" and are sold for various sums. In this case none of the admissions to the grandstand are taxable, for the established price of each admission is \$0.00. The mere fact that certain tickets are sold at an amount above the established price, of course, can not affect the established price of admission. (The ticket "scalpers" must pay a tax on the entire amount of each charge made by them, inasmuch as the whole of these charges is in excess of the established price.)²

(12) The proprietor of a theater, in order to aid a ticket broker to evade in part the tax on excess charges, prints on the tickets for the first 10 rows of his theater a price of \$2.50, although intending all the time to sell these tickets for \$2. The established price for the admission must be printed on the ticket. The mere fact, however, that a price is printed on the ticket does not make that price the established price. In this case it is clear that the established price of admission for these tickets is \$2 and that the price of \$2.50 so printed on the ticket was printed in disregard of law and is not the established price.³

(13) The proprietor of a theater, perceiving that the running attraction is not drawing sufficiently well, arranged to sell the last 10 rows of seats in the orchestra to a cut-rate broker. None of these seats had yet been put on sale, but it had been fully intended to put them on sale for \$2 each and that price was printed on the tickets when sold to the broker. The theater charges the broker 80 cents apiece for these tickets and he puts them on sale for \$1 each. In this case the established price of each of these tickets is \$2, for even though the theater manager sold them to the broker before they had been put on sale, they still bore, when sold to the broker, the price of \$2. Bearing that price when sold, it can not be contended that the original price fixed for these tickets had been changed.⁴

(14) A moving-picture theater issues a free pass which directly entitles the holder to admission to any seat in the house on a certain night. The established prices of admission to the seats in this house vary from 25 cents to 75 cents. In this case the established price of the admission represented by this pass is 75 cents.⁵

REDUCED-RATE OR FREE ADMISSIONS OF EMPLOYEES, MUNICIPAL OFFICERS, SOLDIERS OR SAILORS, OR CHILDREN UNDER TWELVE.

[¶ 583]—Sec. 800 (a). (2) In the case of persons (except bona fide employees, municipal officers on official business, persons in the military or naval forces of the United States when in uniform, and children under twelve years of age) admitted free or at reduced rates to any place at a time when and under circumstances under which an admission charge is made to other persons, a tax of 1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted.

[¶ 584] Art. 18. **Basis, rate, and computation of tax—Reduced rate admissions.**—Any amount paid for the admission to any place⁶ of a bona fide employe,⁷ municipal officer on official business,⁸ person in the military or naval

¹ See note 2 on page 18; clubhouse or grounds, see example 2, Article 7; club dance, see example 2, Article 11; reduced rate for women, see example 9, Article 23; "ladies' day," see example 9, Article 24.

² Seat in window, see example 5, Article 8, also example 13, Article 10; charges by municipality not exempt, see Article 42; tax on excess charge, see Article 30.

³ Tax on excess charge, see Article 30.

⁴ Tax on reduced rate, see Article 23.

⁵ Tax on free admission, see Article 24; tax on reduced rate, see example 3, Article 23.

⁶ For meaning of "amount paid for admission to any place," see Articles 5-16.

⁷ For meaning of "bona fide employees" see Article 21.

⁸ For meaning of "municipal officers on official business," see Article 22.

forces of the United States when in uniform,¹ or child under 12 years of age,² at a price less than the established price of such admission,³ is subject⁴ under the same provisions (section 800 (a) (1) of the Act) already considered to a tax of 1 cent for each 10 cents or fraction thereof of the amount so paid.⁵ This tax (unlike the tax considered in Article 24) applies to the payment for admission, not to the admission itself, and so soon as the payment for admission is made⁶ the tax applies irrespective of whether or not the admission itself ever takes place.⁷ The tax applies, however small the amount may be, for the Act sets no minimum limit to its application, in this respect differing from the Revenue Act of 1917. The tax applies to each admission separately and, therefore, if two or more admissions are paid for at once, whether for same occasion or for different occasions by means of a season ticket,⁸ or subscription,⁸ or otherwise, the total tax is determined by computing separately at the above rate the tax on each admission and by then adding together the taxes so obtained. In other words, the tax for ten similar admissions will always be ten times the tax for each of the single admissions. The tax applies to the whole amount paid for any admission and, therefore, if an admission is paid for in installments the balance of tax due upon the payment⁹ of each installment after the first will not be based on the amount of that installment, but will be determined by computing the tax due on the total amount of all installments paid to date and deducting the amount of tax already paid.¹⁰ Where a ticket¹¹ is purchased by a member of one of the above favored classes and then is sold at an increase of price, the balance of admission tax due is determined in like manner.¹²

Examples.—(1) A certain professional baseball club sells season tickets to the general public for \$40, each of which is good for general admission to the 77-cent seats in its grandstand for each of the 70 home games on its schedule. It sells a similar season ticket to a United States soldier for \$10. In this case the tax to be paid by the soldier on paying for the season ticket is \$1, provided that the ticket complies with Articles 20 and 52.¹³ If such soldier should receive his discharge from the Army after paying for, but before using, such a season ticket, that fact would in no way affect the amount of tax, on such season ticket, for the tax applies to the payment not to the admissions.

(2) A certain moving picture theater admits adults for 25 cents each and children under 12 for 15 cents each. It also sells for \$1 a ticket good for 10 admissions of children under 12. In this case, if the tickets comply with the

¹ For meaning of "persons in the military or naval forces of the United States when in uniform," see Article 22.

² For the tax in the case of a reduced-rate admission of a person not in one of these classes, see Article 23.

³ For meaning of "established price of an admission" see Article 17.

⁴ Unless exempted by the exemption provisions of the Act. See Articles 32-47.

⁵ See, however, Articles 20 and 52.

⁶ See note 1 under Article 57.

⁷ Nor does the mere fact that no admission ever takes place entitle one to a refund of the tax. See Article 67.

⁸ It should be noted, however, that if the season ticket or subscription gives a right to the permanent use of a box or seat, or amounts to a lease for the use of such box or seat, then it is subject to the tax imposed by section 800 (a) (5) in lieu of the tax here imposed. See Article 25.

⁹ Provided that the admission is not had nor any ticket delivered until the payment of the final installment. If such admission is had or a ticket delivered at any time before the final installment of the price of the ticket is paid the balance of tax is payable upon such admission or delivery of ticket (see note 3 under Article 57).

¹⁰ See example 7 under Article 4.

¹¹ Properly marked in accordance with Articles 20 and 52.

¹² See example 4 under Article 4; example 2, Article 30; and note 5 on page 37.

¹³ Marking of tickets of soldiers, see Articles 20 and 52 and examples under Article 20; tax on reduced rate ticket to other persons, see example 11, Article 23; season pass to other persons, see example 2, Article 24; lease of seat or box, see examples 1-4, Article 25; meaning of "soldier," see example 4, Article 22; club membership, see example 5, Article 14.

provisions of Articles 20 and 52, the tax to be paid by a child under 12 on buying a single ticket is 2 cents, and on buying a 10-admission ticket is 10 cents, in each case being 1 cent for each 10 cents or fraction thereof of the amount actually paid for each separate admission.

(3) A Ferris wheel in an amusement park charges 10 cents a ride for children under 15 and 20 cents a ride for persons 15 or over. In this case, if the ticket complies with the provisions of Articles 20 and 52, the tax to be paid on the purchase of a single ticket by a child of 9 is 1 cent. But a child of 12 must pay a tax of 2 cents (for the tax in the case of a child not under 12 is based on the full established price of 20 cents. See Article 23).¹

NOTE: For new ruling on basis for computing tax on admission by season ticket or subscription, see par. 590; T. D. 2975.

[¶ 585] Art. 19. **Basis and rate of tax—Free admissions.**—Where a bona fide employee,² municipal officer on official business,³ person in the military or naval forces of the United States when in uniform,⁴ or child under 12 years of age⁵ is admitted⁶ free⁷ to any place, no tax is imposed by the Act, for the applicable provisions (section 800 (a) (1) as before) imposes the tax on the "amount paid," and as there is no amount paid there is no tax.⁸

[¶ 586] Art. 20. **Marking of reduced-rate tickets of employees, etc.**—Where no ticket or other evidence of the right to admission is used (see Article 48) the question whether or not an amount paid for admission at a reduced rate is paid for the admission of a person in one of the favored classes mentioned in Article 18, or whether or not any person being admitted free is a person in one of such classes, is answered by determining the status of the person being admitted. But where a ticket or other evidence of the right to admission is used it naturally can not be determined when this ticket is sold who is to make use of it. Therefore, no amount paid for a ticket or other evidence of the right to admission can be deemed an amount paid for the admission of a person in one of such favored classes unless the ticket is clearly marked⁹ in such a way as to be good only for the admission of a person who is a member of that particular class or a member of one of any selected number of such favored classes.

Examples.—(1) A baseball park has a grandstand in which the established price of reserved seats is 50 cents. The management, however, makes a half-rate price to soldiers and sailors in uniform. Four 50-cent seats are sold to a soldier in uniform for \$1, but the tickets are not marked in any way to show they are limited to the use of soldiers in particular, or members of others or of all of the favored classes mentioned in Article 18 in general. In this case the soldier must pay a tax of 20 cents, based on the established price, as no advantage can be taken of the provisions of Article 18 unless the provisions of Article 20 and 52 are complied with.¹⁰

(2) A certain moving-picture theater has reserved seats, of which the established price is 50 cents. The management, however, makes a half-rate

¹ For meaning of "established price," see example 3, Article 17.

² For meaning of "bona fide employees," see Article 21.

³ For meaning of "municipal officers on official business," see Article 22.

⁴ For meaning of "persons in the military or naval forces of the United States when in uniform," see Article 22.

⁵ For the tax in the case of a free admission of a person not in one of these classes, see Article 24.

⁶ Or secures free a ticket or other evidence of a right of admission, provided that it complies with the provisions of Articles 20 and 50-52.

⁷ An admission paid for by services, etc., instead of money is not "free." See Article 16.

⁸ It should be noted, however, that if it is a right to the permanent use of a box or seat or a lease for the use of such box or seat which is acquired free, then there is a tax imposed by section 800 (a) (5), and Article 19 has no application whatever. See Article 25.

⁹ For additional details as to the marking required, see Article 52. For further requirements as to the printing or marking of tickets, see Articles 50-51.

¹⁰ Meaning of "established price," see example 8, Article 17; tax on free admissions, see examples 4 and 9, Article 24.

price to soldiers and sailors in uniform and children under 12. A child purchases a ticket for one of these seats for 25 cents. There is printed on the ticket among other things "This ticket is good only for the admission of a United States soldier or sailor in uniform or of a child under 12." The printing of this ticket complies with the provisions of Articles 20 and 52, and the tax is therefore only 3 cents.

(3) A certain moving-picture theater has reserved seats, of which the established price is 50 cents. The management, however, makes a half-rate price to soldiers and sailors in uniform and a one-fifth rate price to children under 12. A child under 12 purchases a ticket on which is printed among other things "This ticket is good only for the admission of a United States soldier or sailor in uniform or of a child under 12." The child paying 10 cents for such a ticket need pay a tax of 1 cent only, even though the ticket by its terms could be used by a soldier or sailor in uniform, whose tax would be 3 cents. For the tax is based on the amount actually paid and the provisions of Articles 20 and 52 are satisfied if the ticket is limited to the use of the members of the favored classes, even though the rates provided by the theater for different ones of these classes are not the same.¹

[¶ 587] Art. 21. **Meaning of "bona fide employees."**—The term "bona fide employees" includes: (1) Every person regularly employed by the proprietor of the place or the attraction (including the officers and directors of a corporate proprietor) in connection with the business there transacted, whether the duties of such person require admission to such place or not; (2) every person regularly employed at the place, or regularly engaged in work or business there, with the consent of the proprietor of the place or the attraction; and (3) every person whose admission to the place is required for the performance of a duty to the proprietor of the place or the attraction or to some other person who, with the proprietor's consent, is engaged in work or business or is in attendance there. Persons included within either class 1 or class 2 have the character of "bona fide employees" at all times, whether on or off duty. Persons not included within class 1 or class 2 but only within class 3 have the character of "bona fide employees" only when in performance of a duty which requires admission. The fact that a person is not being paid for the services rendered does not necessarily exclude him from any of the above classes.

Examples.—(1) In the case of a baseball park the following, among others, are "bona fide employees": (a) In class 1, the officers and directors of the club corporation, a stenographer employed at the down-town office of the baseball club; (b) in class 2, members of the home team and substitutes, ticket sellers, ticket collectors, newspaper reporters and telegraphers whose duty it is to write and transmit accounts of the games, boys selling peanuts and "pop," boys selling newspapers, the manager, trainer, players, and substitutes of the visiting team; (c) in class 3, members of the band employed by the club for the opening game, a boy returning a ball batted over the fence, a workman called in to repair the stand of a concessionaire.

(2) In the case of a theater the following, among others, are "bona fide employees": (a) In class 1, the "advance agent" of an attraction then showing or soon to show, the house physician, the regularly employed attorney for the theater; (b) in class 2, actors and actresses then playing at the theater, members of the orchestra, an organist, a moving-picture machine operator, the ushers; (c) in class 3, a physician called in to attend a spectator taken suddenly ill, a theatrical critic of a newspaper attending to view and review the play,

¹ Tax on such reduced rate tickets, see example 2, Article 18; meaning of "soldier," see example 4, Article 22.

young women selling souvenir programs at a benefit, a Four Minute Man attending to speak.

(3) In the case of a track meet, the starter, judges, and other officials are "bona fide employees" within the meaning of the Act.

[¶ 588] Art. 22. **Municipal officers, and soldiers and sailors.**—The term "municipal officers on official business" includes policemen, firemen, and other municipal officers or employees when admitted in the course of official duty. Such admittance, however, must be one that is really necessary in order to perform that official duty. The term "persons in the military or naval forces of the United States when in uniform" does not include persons formerly but no longer members of such forces.

Examples.—(1) Where a city ordinance provides that every theater must have a fireman at the back of the stage during the whole of every performance, a fireman coming to the theater to perform such duty is included in the meaning of the term "municipal officers on official business."

(2) Where a city ordinance establishes a board of moving-picture censors and imposes on them the duty of visiting moving-picture shows to see whether they approve of the films exhibited, members of such a board attending a moving-picture show in the performance of such duty are "municipal officers on official business" within the meaning of the Act.

(3) A policeman, in uniform and traveling his beat, drops into a moving-picture show without any official cause. He is not "a municipal officer on official business."

(4) A person in the uniform of the United States Army marked with a red chevron on the left sleeve, or with any other insignia showing that he is no longer a member of the military forces of the United States, is not included within the meaning of the term "persons in the military or naval forces of the United States when in uniform."

REDUCED-RATE OR FREE ADMISSIONS OF OTHER PERSONS.

(Sec. 800(a) (2). See par. 583.)

[¶ 589] Art. 23. **Basis, rate, and computation of tax—Reduced-rate admissions.**—Any amount paid for the admission to any place¹ of any person (other than a bona fide employee,² municipal officer on official business,³ person in the military or naval forces of the United States when in uniform,⁴ or child under 12 years of age),⁵ at a price less than the established price of such admission,⁶ is subject⁷ under these provisions of the Act to a tax of 1 cent for each 10 cents or fraction thereof of the established price of such admission. In other words, where a person not in one of the above classes pays for admission an amount less than the established price of such admission he must pay the same tax as if he paid for such admission the full established price. This tax (unlike the tax considered in Article 24) applies to the payment for admission, not to the admission itself, and so as soon as the payment for admission is made⁸ the tax applies irrespective of whether or not the admission itself ever takes place.⁹ The tax applies however small the amount paid or the established price of such admission may be, for the Act sets no minimum limit to its

¹ For meaning of "amount paid for admission to any place," see Articles 5-16.

² For meaning of "bona fide employees," see Article 21.

³ For meaning of "municipal officers on official business," see Article 22.

⁴ For meaning of "persons in the military or naval forces of the United States when in uniform," see Article 22.

⁵ For the tax in the case of a reduced-rate admission of a person in one of these classes, see Article 18.

⁶ For meaning of "established price of an admission," see Article 17.

⁷ Unless exempted by the exemption provisions of the Act. See Articles 32-47.

⁸ See note 1 under Article 57.

⁹ Nor does the mere fact that no admission ever takes place entitle one to a refund of the tax. See Article 67.

application, in this respect differing from the Revenue Act of 1917. The tax applies to each admission separately, and, therefore, if two or more admissions are paid for at once, whether for the same occasion or for different occasions by means of a season ticket,¹ or subscription,¹ or otherwise, the total tax is determined by computing separately at the above rate the tax on each admission, and by then adding together the taxes so obtained. In other words, the tax for ten similar admissions will always be ten times the tax for each of the single admissions. (Ruling changed. See paragraph 590.) Where a ticket is sold for less than the established price to any person not in one of the favored classes mentioned above and is then resold for the established price of admission or less no further admission tax is due,² but if it is resold for more than the established price there will be a balance of admission tax due under the provisions of Article 4.³ (See paragraph 590 for new basis of tax on admission by season ticket.)

Examples.—(1) The proprietor of a moving picture theater, the established price of admission to which is 25 cents, admits a person for 5 cents. In this case the tax is 3 cents,⁴ just as if the full established price had been paid.

(2) A subscription ticket to a series of 10 concerts is sold for \$15 to a subscriber, entitling him to one \$2.25 seat at each concert. In this case the tax is \$2.30⁴ (10 times 23 cents), the same as if the full rate had been paid for each ticket.⁵ (See paragraph 590 for new basis of tax on admission by season ticket or subscription.)

(3) The management of a certain theater, two hours before the time of a certain performance, cuts the price of all seats in the last four rows of the orchestra from \$2 to \$1.50, the \$1.50 seats in other parts of the house having all been sold and there being no demand for \$2 seats. As the established price can not be changed by such a reduction (see Article 17) all tickets so sold are sold at less than the established price and the tax in each case is 20 cents,⁴ being based on the established price. The result would be the same if the reduction were made only in the case of one ticket. In case, however, of such a sale, to a soldier (for example), if the ticket is properly marked so as to be good only for the admission of a member of one or more of the classes mentioned in Article 18 (see Articles 20 and 52), then the tax to be paid is only 15 cents. See article 18.

(4) A certain moving-picture theater gives, on certain days to everyone paying the regular admission price of 15 cents, a double ticket, one-half of which is good for admission that day and the other half is good for admission at any other time. In this case each of these tickets is actually sold for half the established price and, therefore, the tax to be paid is 4 cents, 2 cents for each ticket.⁴

(5) A certain ice-skating rink, the established price of admission to which is 50 cents, makes a wholesale rate of 12 tickets for \$5. The tax to be paid by a person purchasing such tickets is 60 cents,⁴ being based on the established price.

(6) A certain moving-picture theater whose established price of admission is 15 cents has attached to each of its tickets a coupon, six of which if

¹ It should be noted, however, that if the season ticket or subscription gives a right to the permanent use of a box or seat or amounts to a lease for the use of such box or seat, then it is subject to the tax imposed by section 800 (a) (5) in lieu of the tax here imposed. See Article 25.

² For the full admission tax based on the established price has already been paid, having been paid at the time of the first sale. See example 12 under this article.

³ See Article 4 and example 4 thereunder; also example 2, Article 30.

⁴ Provided the person admitted (or to be admitted), is not a member of one of the classes mentioned in Article 18. If he is a member of one of such classes and the provision of Article 20 and 52 are complied with, then the tax to be paid is to be determined under Article 18.

⁵ Lease of box or seat, see Article 25 and example 4, Article 26; membership dues, see example 2, Article 14.

presented at the box office will be accepted as 10 cents of the price of a 15-cent ticket. In the case of a person presenting six of such coupons and 5 cents for a 15-cent ticket the tax will be 2 cents,¹ being based on the established price and not on the reduced rate at which the ticket is being purchased.

(7) A certain theater sells to a club, for distribution to its members, 400 seats for a particular performance. The established price of these seats is \$2 each, but the theater makes the club a special rate of \$1.50 each. The tax to be paid by the club is \$80, being based on the established price of each ticket.²

(8) The management of a circus, the established price of admission to which is 68 cents, sells 200 reserved seats, each of which sells at an additional established price of 68 cents, to a charitable organization for a total of 68 cents each for both admission and seat. In this case the tax to be paid is \$28 (200 times 2 times 7 cents), being based on the established price of each admission and seat.³

(9) A certain dance is given at which the price of a man's ticket is 50 cents and that of a woman's is 25 cents. Each woman must pay a tax of 5 cents the same as paid by a man.⁴

(10) A cut-rate broker of theater tickets contracts to purchase from the manager of a theater the tickets to the last eight rows in the orchestra for three full weeks of an attraction. The established price of these tickets is \$2, but he secures them for 80 cents each and sells them for \$1 each. In this case the tax to be paid by him on purchasing the seats from the theater is 20 cents per ticket, being based on the established price.⁵

(11) A certain professional baseball club sells season tickets for \$40, each of which is good for general admission to the 77-cent seats in the grandstand for all of the 70 home games on its schedule. In this case the tax to be paid is \$5.60¹ (70 times 8 cents). Were it a particular seat reserved in this case, it would be taxable under Article 25, and not Article 23.⁶ (See paragraph 590 for new basis of tax on admission by season ticket.)

(12) The manager of a certain theater sells to one of his friends for 10 cents a ticket good for admission to a \$2 seat. This man sells it to another person for \$1. In this case a tax of 20 cents is payable when the ticket is sold by the theater. When it is resold for a dollar no balance of admission tax is due, for the tax has already been paid on the full established price. The seller can, however, if he desires, collect 20 cents from the buyer to serve as a refund to him of the tax already paid. No tax on excess charges is due, for the ticket is sold for less than the established price.⁷

NEW BASIS OF TAX ON ADMISSION BY SEASON TICKET OR SUBSCRIPTION (T. D. 2975).

[¶ 590] **Established price of season or subscription tickets.**—Heretofore it has been held that under paragraph 2, subdivision (a), section 800, Revenue Act of 1918, that admission was at a reduced rate from the established price when a season or subscription ticket for a number of entertainments was sold at a price less than the sum of prices had tickets been sold to each entertainment separately. For example: A subscription ticket to a series of 10 con-

¹ Provided the person admitted (or to be admitted), is not a member of one of the classes mentioned in Article 18. If he is a member of one of such classes and the provisions of Articles 20 and 52 are complied with, then the tax to be paid is to be determined under Article 18.

² Rental of place, see Article 64.

³ Reserved seat as admission, see example 1, Article 8; as to exemptions, see Articles 33-34, 36 and 39.

⁴ See examples 9 and 10, Article 17.

⁵ See Article 17 and example 13 thereunder.

⁶ Season tickets to favored classes, see example 1, Article 18; free season pass, see example 2, Article 24; lease of box or seat, see examples 1-4, Article 25; "memberships," see example 5, Article 14.

⁷ Meaning of "established price," see Article 17 and example 5 thereunder.

certs is sold for \$15 to a subscriber, entitling him to one \$2.25 seat at each concert. Had a ticket been sold separately for such a seat to each entertainment the tax due would be 23 cents on each ticket, and \$2.30 for the ten tickets. Holding that the subscription ticket was sold at a reduced rate when sold for \$15 the tax collected was \$2.30, instead of \$1.50 (one cent for each ten cents or fraction thereof).

The Attorney General has recently expressed an opinion that such interpretation of the law is incorrect, and that all who enter by a season or subscription ticket must pay a tax based upon the regular price for such a ticket.

The tax will hereafter be collected in accordance with this recent opinion of the Attorney General. For example: A person purchasing a season or subscription ticket which admits him to a number of entertainments may not be subject to the same amount of admissions tax as a person who purchases single admission tickets to the same series of entertainments, but must pay a tax based on the price at which such season or subscription tickets are at that time sold to other persons, that is, the established price of admission by season or subscription tickets.

All regulations and Treasury Decisions inconsistent with the ruling contained herein are hereby revoked. (T. D. 2975, signed by Commissioner Daniel C. Roper, and dated Feb. 11, 1920.)

[¶ 591] Art. 24. **Basis, rate, and computation of tax—Free admissions.**—Where any person (other than a bona fide employe,¹ municipal officer on official business,² person in the military or naval forces of the United States when in uniform,³ or child under 12 years of age)⁴ is admitted⁵ to any place⁶ free, such free place is subject⁷ under these provisions of the Act to a tax of 1 cent for each 10 cents or fraction thereof of the established price of such admission.⁸ In other words, a free admission granted to a person not in one of the above classes is taxable at the same rate as a payment at the established price for such an admission. Note that the case of an admission at the established price or a reduced rate the tax applies on the payment, while in the case of a free admission the tax applies on the admission.⁹ The tax must be paid on the free receipt of a ticket or card directly entitling to admission.¹⁰ But as the tax is based on the admission, in case no admission actually occurs the tax liability is defeated, and there is therefore a right to a refund of any tax paid on such ticket or card.¹¹ Where a ticket is issued free to any person not in one of the favored classes mentioned above and is then sold for the established price of admission or less, no further admission tax is due,¹² but if it is resold for more than the established price there will be a balance of admission tax due under the provisions of Article 4.¹³

¹ For meaning of "bona fide employees," see Article 21.

² For meaning of "municipal officers on official business," see Article 22.

³ For meaning of "persons in the military or naval forces of the United States, when in uniform," see Article 22.

⁴ A free admission of a person in one of these classes is not taxable. See Article 19.

⁵ For meaning of "admission," see Articles 6-15.

⁶ For meaning of "to any place," see Article 5.

⁷ Unless exempted by the exemption provisions of the Act. See Articles 32-47.

⁸ For meaning of "established price of an admission," see Article 17.

⁹ It should be noted, however, that if it is a right to the permanent use of a box or seat or a lease for the use of such box or seat which is acquired free, then there is a tax imposed by section 800 (a) (5) on the mere right to the use of such box or seat, and Article 24 has no application whatever. See Article 25.

¹⁰ See Article 57 and note 4 under Art. 57.

¹¹ See Article 67.

¹² For the full admission tax based on the established price has already been paid, having been paid at the time the ticket was issued. See example 10 under this article.

¹³ See Article 4 and example 4 thereunder; example 2, Article 30; and note 5 on page 37.

Examples.—(1) The proprietor of a moving-picture theater, the established price of admission to which is 25 cents, admits a person free. This person must pay a tax of 3 cents¹ just as if he had been charged the established price of admission.

(2) A certain professional baseball club gives a season pass book to a stockholder, which contains a separate ticket for each of the 70 home games on its schedule, good for general admission to the 77-cent seats in its grandstand. In this case the stockholder, on receipt of the book² must pay a tax¹ of \$5.60 (70 times 8 cents). Were a particular seat reserved in this case it would be taxable under Article 25 and Article 24.³

(3) The manager of an orchestra gives a subscription ticket to each of the inmates of an old people's home. Each of these tickets is good for admission to a \$1.75 seat at each of seven concerts. In each case a tax of \$1.26¹ (7 times 18 cents) must be paid on the receipt of the ticket.

(4) A professional baseball club has at its grounds a grandstand, a first base bleachers, a third base bleachers, and a center field bleachers. The ordinary price for the grandstand is 75 cents, for the first and third base bleachers 50 cents, and for the center field bleachers 25 cents. There are no reserved seats in these bleachers, and the admission tickets to them are put on sale only half an hour before the game begins. The club on a certain Saturday afternoon throws open the third base bleachers free to the children of a nearby school, having decided to do so before the gates were opened. In this case any children under 12 are free from tax (see Article 19). Any children 12 or over must pay a tax of 5 cents, for the established price of the third base bleachers must be considered to be the same as that of the first base bleachers, 50 cents (see Article 17). If the center field bleachers had been thrown open free to these children, instead of the third base bleachers, then no children admitted would have had to pay a tax, for there would have been no equally good accommodations to which a charge was made.⁴

(5) The manager of a moving theater which has no reserved seats but whose ordinary price of admission is 10 cents decides, before opening his doors on a certain day, to allow everyone in free on that day to celebrate his election as alderman. The established price of admission for that day being \$0.00, no one admitted need pay a tax. See Article 17.

(6) When the owner of a theater enters it no admission, free or otherwise, is involved. See Article 6.⁵

(7) When members of a club enter the clubhouse or club grounds by reason of their membership no admission, free or otherwise, is involved. See Article 7.⁶

(8) A certain social club occasionally has lectures given under its auspices at a rented hall. Tickets are supplied free to its members, but the charge to everyone else is 50 cents. Each member on receipt of a ticket must pay a tax of 5 cents¹ based on the established price of such admission. See also Article 7.⁶

¹ Provided the person admitted is not a member of one of the favored classes mentioned in Article 18. If he is a member of one of such classes, then there is no tax to be paid. See Article 19.

² See Article 57 and note 4 under Article 57.

³ Stockholder not "owner," see example 2, Article 6; reduced rate, see example 11, Article 23; lease of box or seat, see examples 1-4, Article 25.

⁴ See Article 17 and particularly example 6 thereunder; marking of such tickets, see Article 20 and 52.

⁵ Permanent use of box or seat, see Article 25.

⁶ Co-operative parties, see Article 11; rental of place, see Article 64; membership privileges, see Article 14.

(9) A certain professional baseball club, the established price of admission to whose grandstand is \$1, has a "ladies' day" every Monday, and on that day admits all women free of charge who come escorted by a man.¹ An unattended woman may secure admission the same as a man by purchasing a ticket for \$1. In this case a woman admitted with a man escort must pay a tax of 10 cents, the established price of admission being \$1 and she being admitted free.²

(10) The manager of a certain theater gives a free pass, directly entitling to admission to a \$2.00 seat, to one of his friends. His friend sells it to another person for \$1.00. In this case a tax of 20 cents is payable³ when the pass is handed out by the manager of the theater. When the pass is sold for a dollar, no balance of admission tax is due, for the tax has already been paid on the full established price. The seller can, however, if he desires, collect 20 cents from the buyer to serve as a refund to him of the tax already paid. No tax on excess charges is due for the ticket is sold for less than the established price. See Articles 17 and 30.

(11) A theater issues a free pass which can be exchanged at the box-office for a ticket for any seat in the house outside of the boxes on a certain night. The most expensive seats in the house with that exception are \$2. The holder of the pass on reaching the theater finds that all \$2 seats have been taken and he exchanges the pass for a ticket to a \$1.50 seat. In this case the tax is not due until he secures the ticket and the tax to be paid is 15 cents,⁴ based on the established price of the seat he actually secures.

LEASES OF BOXES OR SEATS.

[¶ 592] **Sec. 800 (a).** (5) In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement (in lieu of the tax imposed by paragraph (1), a tax equivalent to 10 per centum of the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder, such tax to be paid by the lessee or holder.

[¶ 593] **Art. 25. Basis, rate, and computation of tax.**—In the case of a person having the permanent use or a lease for the use of a box or a seat in any opera house or other place of amusement, neither the tax imposed by section 800 (a) (1) of the Act⁵ on "the amount paid for admission to any place"⁶ nor that imposed by section 800 (a) (2)⁶ apply. Instead, the above provisions of the Act impose a tax on the right to the use of the box or seat equivalent to 10 per cent⁷ of the total amount that would be realized by the sale, at the established price, of the right to occupy a similar box or seat for each performance or exhibition during the period for which such box or seat is reserved for the lessee or holder. In other words, the tax is based not on the amount, if any, actually paid for the box or seat, but on the amount that would be paid, at the established price, for admission and the use of similar

¹ Couple ticket, see example 10, Article 17.

² This result is different from that reached under the revenue act of 1917, because the words "of the same class" which appeared in subdivision (b) of section 700 of that Act were omitted when that subdivision was re-enacted, slightly changed, as paragraph (2) of subdivision (a) of section 800 of the Revenue Act of 1918.

³ See Footnote 1, page 28.

⁴ See Articles 4, 18 and 19.

⁵ As this tax is not imposed on "the amount paid for admission to any place," the provisions of Articles 5-16, which define the meaning of that expression, have no application here.

⁶ See Articles 23 and 24.

⁷ Note that the rate of tax here is "10 per cent" and not "1 cent for each 10 cents or fraction thereof," as it is under section 800 (a) (1). The fact that this rate is a percentage makes possible a tax involving fractions of a cent, which is not possible where the other rate is used. As the tax is based on each performance or exhibition, several taxes are almost certain to be payable at the same time, and therefore these fractional parts of a cent may affect the result, for they are to be preserved in computation, since section 1313 of the Act only affects the payment of the tax.

accommodations¹—not in the actual use of the box or seat but on the most extensive possible use.² In the case of a box, if there is no box of similar size, the tax for each performance or exhibition is to be computed by calculating on the above basis the tax payable on a single box seat in the same part of the house and multiplying that amount by the number of seats in the box. If there is no box occupying a similar position the tax for each performance or exhibition is to be computed by calculating, on the above basis, the tax payable on a single seat in the same part of the house and multiplying that amount by the number of seats in the box.

Examples.—(1) A certain professional baseball club sells a season box for \$363.63. Each box contains four seats, of each of which the established price is \$2 for each of the 70 games of the season. In this case the tax is \$56 (70 times 10 per cent of 4 times \$2). Each ticket for a seat in such box should be marked, to comply with Article 51, as follows:

Established price.....	\$2.00
Tax paid.....	.20
Total.....	\$2.20

(2) In the case of another professional baseball club an advance payment of 25 cents for each seat in a six-seat box for each of the 70 games of the season reserves the box for the entire season, but to occupy a seat in the box at any particular game an admission charge of 77 cents must also be paid. The established price, including admission, for individual seats in boxes which are not so reserved is \$1.27 a game. In this case the person reserving the box must pay a tax of \$53.34 (70 times 10 per cent of 6 times \$1.27).³ This tax having once been paid, the holder of the box, or other persons whom he allows to use it, in purchasing admission tickets (singly or in books) to be used to secure admission to the box, will not have to pay any tax on such admission tickets, provided that they are so marked as to be good for admission only when presented together with a ticket for a seat in a reserved box. As the price charged for admission is 77 cents, and the tax under these provisions of the Act is 10 per cent, each such admission ticket should be marked, to comply with Article 51, as follows:

Established price.....	\$0.77
Tax paid.....	.077
Total.....	\$0.847

The established price of such a box seat is, as we have seen, \$1.27. Admission being 77 cents, the balance of 50 cents must be considered the established price of the reservation. Such reservation must be evidenced by a ticket (see Article 48. Each such ticket should be marked, to comply with Article 51, as follows:

Established price.....	\$0.50
Tax paid.....	.05
Total.....	\$0.55

(3). Another professional baseball club sells season tickets for \$40, each of which is good for admission to a particular 77-cent seat in its grandstand for each of the 70 home games on its schedule. In this case the tax to be paid is \$5.39 (70 times 10 per cent of 77 cents). Were this case a case of a general admission and not one of the reservation of a particular seat it would be taxable under Article 23 instead of Article 25.

¹ There are no favored classes under this tax as there are under the tax imposed by section 800 (a) (1). (See Articles 18-19.) This tax is the same in the case of all classes of persons, whether the full rate be paid, or a reduced rate, or nothing at all.

² This tax is imposed, even in the case of a free lease of a box or seat, entirely irrespective of whether the box or seat is ever used at all, thus differing from the tax on free admissions under section 800 (a) (2), where if the admission does not actually occur there is a right to a refund of any admission tax paid. (See Articles 24 and 67.)

³ See example 1 above; season ticket to favored classes, see example 1, Article 18; reduced rate for general admission, see example 11, Article 23; free general admission, see example 2, Article 24.

(4) Another professional baseball club desiring to honor a general who commanded a division in the European war and who is still in the United States Army, gives him free, for his personal use, a season pass entitling him to admission to a particular \$1.27 box seat in its grandstand for each of the 70 home games on its schedule. In this case, the general must pay a total tax of \$8.89 (70 times 10 per cent of \$1.27). He must be provided with a separate or separable ticket evidencing each right to the use of the seat (see Article 48) and the tax on each ticket must be paid when he receives it. Note that in this case, as the tax is under Article 25, the fact that the general is a United States soldier in uniform has no effect and that the tax on the pass is irrespective of the number of times it is used. Were the pass here one entitling him merely to general admission and not to a particular seat the case would have fallen under Article 19 and no tax at all would be due.

(5) A certain person owns a theater and leases it to a producing company. It is provided in the lease that the owner shall have, without charge, the perpetual use of a certain six-seat box. The established price of seats, including box seats, vary for different attractions. In this case the Act imposes on such owner¹ a tax for each performance given in the theater (irrespective of whether any of the seats in the box are used at that performance) equivalent to 10 per cent of the established price of the whole box for that performance. He must be provided with a separate or separable ticket evidencing each right to the use of a seat in the box (see Article 48), and the tax on each ticket must be paid when he receives it.

(6) The owners of a certain opera house, in leasing it to an opera company, reserve for their own use the whole parterre tier of thirty-five 6-seat boxes, paying therefor annually the sum of \$70,000. These boxes are distributed among the various owners, \$2,000 a year being paid for an annual lease of each. There are no similar boxes in the house, but the established price of each seat in the boxes in the next tier, which is less desirable, is \$10 per seat. The number of performances during the season is fixed in advance at 100. Each lessee of such a box on paying the \$2,000 for the season must pay a tax of at least \$600 (100 times 10 per cent of 6 times \$10) to be paid over in turn to the opera company and the collector of internal revenue. This minimum figure for the tax is based on the established price of the box seats which are the most nearly similar,¹ but which are less desirable.

[¶ 593(a)] Art. 26. **Meaning of "lease."**—This tax, as stated in Article 25, applies to cases where a person has the permanent use, or a lease for the use, of a box or seat in any opera house or other place of amusement. The only term here used that seems to need definition is the term "lease." To constitute a lease of a box or seat within the meaning of these provisions of the Act a formal document of lease is, of course, not necessary. Any reservation of a box or seat for every performance or exhibition to be given during any period of time of a week or more, in an opera house or other place of amusement, as a part of a regular series of performances or exhibitions given by the owners or lessees of that opera house or other place of amusement, is clearly a "lease" within the meaning of the Act. Where, however, a series of concerts or other entertainments are held in a place not owned or regularly leased, but only rented on occasion, by the management of the series, a subscription for, or any reservation of, a box or seat for all of the performances in such a series is not a "lease" within the meaning of the Act.

Examples.—(1) A person arranges with a certain theater to reserve for his use a certain seat in the orchestra for every Monday night during the year.

¹ The tax imposed by section 800 (a) (1) and the tax imposed by section 800 (a) (2) do not apply to the case where an owner enters his own place. See Article 6. But the tax under section 800 (a) (5) is not so limited and applies to an owner as well as to other persons.

The theater is a vaudeville house which has two performances every day, the attractions running for a period of a week. Such a reservation, being for only a small proportion of the total number of performances, is not a lease within the meaning of the Act.

(2) A certain grand opera company which owns the building used by it has a regular season of 10 weeks of opera every winter, performances being given every night, including Sunday, and also on Saturday afternoons. On Sunday afternoons during the opera season concerts are given under the auspices of the company by various singers of the company. Outside of the opera season the auditorium in which the opera is held is rented by the opera company for various public meetings and theatrical attractions, etc., in order to secure additional income for the support of the opera company. A certain person reserves a box for every performance of the opera during the season, this reservation not including the Sunday concerts nor, of course, the meetings and theatrical attractions outside of the opera season. This reservation constitutes a "lease" within the meaning of the Act.

(3) Another person reserves a box, in the opera house of the opera company mentioned in the preceding example, for every Wednesday and Friday night during the season. In this case, as the reservation is only for particular nights and not for all performances of the opera series, it does not constitute a lease within the meaning of the Act. Any amounts paid for admission to this box under this reservation would, however, be taxable under section 800 (a) (1) or (2) unless exempted by the exemption provisions of the Act.¹

(4) A certain choral society gives a series of 10 concerts every winter. The concerts are given Sunday nights in a theater the use of which is rented for these occasions. The society sells subscription tickets which entitle the holder to the use of a particular seat for all 10 of the concerts. Such a subscription is not a "lease" within the meaning of the Act.²

ROOF GARDENS, CABARETS, OR SIMILAR ENTERTAINMENTS.

[§ 594] Sec. 800 (a). (6) A tax of $1\frac{1}{2}$ cents for each 10 cents or fraction thereof of the amount paid for admission to any public performance for profit at any roof garden, cabaret, or other similar entertainment, to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be deemed to be 20 per centum of the amount paid for refreshment, service, and merchandise; such tax to be paid by the person paying for such refreshment, service, or merchandise.

[§ 595] Art. 27. **Basis, rate, and computation of tax.**—Where the amount paid for admission³ to any public performance for profit at any roof garden, cabaret, or other similar entertainment⁴ is concealed by being wholly or in part included in the amount paid for refreshment, service, or merchandise, the above provisions of the Act impose a tax of $1\frac{1}{2}$ cents for each 50 cents,⁵ or fraction thereof of the total amount there expended for refreshment, service, or merchandise, by any person attending such performance or entertainment. The tax must be calculated at this rate, and on the basis of each person's bill. It is not a tax of 3 per cent, nor a tax on the gross receipts of the place. In cases where a fixed charge is made for admission⁶ the proceeds of which more than cover the cost of the performance or entertainment, and

¹ For exemptions, see Articles 32-47.

² For reduced rate admission, see example 2, Article 23; "membership," see example 2, Article 14; rental of place, see Article 64.

³ For meaning of "amount paid for admission," see Article 6-16.

⁴ For the "entertainments included," see Article 28.

⁵ The tax is in fact " $1\frac{1}{2}$ cents for each 10 cents or fraction thereof of the amount paid for admission," which amount is "to be deemed to be 20 per centum of the amount paid for refreshment, service, and merchandise." " $1\frac{1}{2}$ cents for each 10 cents or fraction thereof of 20 per centum" of any amount, however, always equals " $1\frac{1}{2}$ cents for each 50 cents or fraction thereof" of such amount and, therefore, the latter expression is used here in order to simplify the calculation of the tax.

⁶ "Admission" as here used includes, of course, the use of seats, or tables, or the like. See Article 8.

there is no increase in the charges for refreshment, service, or merchandise, on account of such cost, the tax imposed by section 800 (a) (1) and (2) of the Act applies and the above provisions do not apply. But, unless these requirements are satisfied, a charge made for "admission" to such a performance or entertainment (although it will be subject to a tax¹ as an admission charge) will not represent the full amount charged for admission and, therefore, as part of such amount is concealed in the amount expended for refreshment, service and merchandise, a tax will be imposed by the above provisions of the Act on the amount so expended.

Examples.—(1) A certain person invites four of his friends to attend a cabaret. No fixed charge is made for admission. His check for refreshments for the party amounts to \$15.87, which includes a *couverture* charge of 40 cents for each. As 50 cents is contained in \$15.87 thirty-one and a fraction times, the tax in this case is 48 cents (32 times $1\frac{1}{2}$ cents).

(2) A certain person reserves a table for himself and three friends at a roof-garden entertainment and pays \$12 for the reservation, this being the regular price. This being a charge for admission,² and apparently being adequate, there is no tax in this case under these provisions of the Act, but a tax of \$1.20 is imposed by section 800 (a) (1) of the Act. (See Article 4). In this case if the tables were all equally well located and \$24 was the price charged for reserving most of the 4-seat tables and was the highest price, while this particular person was charged only \$12, then \$24 would be the established price of such a table and his tax would be \$2.40, being based on that established price (see Article 23). In any case, the reservation of each seat at such a table must be evidenced by a ticket (see Article 48), and this ticket must comply with the provisions of Articles 50-51.

(3) A certain restaurant conducts a cabaret in its main dining room every evening from 8 to 12 o'clock. In this case a person who takes dinner in that dining room and leaves the room before 8 o'clock and who therefore does not witness the cabaret at all, is not subject to any tax under these provisions of the Act.

(4) In this same restaurant there are other dining rooms so entirely separate from the main dining room that from them nothing that is going on in the main dining room can be either seen or heard. No cabaret performance or other entertainment is furnished in these other rooms. In this case no person dining in one of these other rooms, even during the time that the cabaret performance is going on in the main dining room, is subject to any tax under these provisions of the Act.

(5) A hotel, running a cabaret, requires every person entering to purchase a 50-cent food check. This check is later accepted as 50 cents in payment of the food and other refreshments consumed. A certain person purchases such a check for 50 cents and spends an evening at the cabaret. His bill at the end of the evening comes to \$8.33, and he pays it by handing in the check and paying \$7.83 in cash. The 50 cents so paid for this check is not "paid for admission" within the meaning of the Act (see example 2, Article 13). The tax in this case is based on the \$8.33 spent and is 26 cents (17 times $1\frac{1}{2}$ cents).

(6) A certain man goes to a cabaret where there is a general admission charge of 25 cents. The entertainment provided is very elaborate and this is reflected in the price of the food. His bill for food comes to \$12.37. In this case there is an admission tax of 3 cents, due under Article 4, on the 25 cents paid on admission. But as this amount is clearly inadequate there is also a tax of 38 cents (25 times $1\frac{1}{2}$ cents) based on the amount paid for food.

¹ See Articles 4, 18, 23 and 24.

² See example 2, under Article 8.

[¶ 596] Art. 28. **Entertainments included.**—"Any public performance for profit at any roof garden, cabaret, or other similar entertainment" includes every public vaudeville or other performance or diversion in the way of acting, singing, declamation, or dancing, either with or without instrumental or other music, conducted, for the profit of the management, by professionals, amateurs, or patrons under the auspices of the management, in connection with the service of selling of food or other refreshment or merchandise at any room in any hotel, restaurant, hall, or other public place. Every form of entertainment so conducted is included, except instrumental music unaccompanied by any other form of entertainment.

Examples.—(1) A proprietor of a dancing establishment provides for the serving of refreshments to his patrons. No charge is made for "admission" or for dancing. In this case the management is conducting an entertainment the admission charge to which is wholly included in the price paid for refreshments, and there will be a tax under these provisions of the Act.

(2) A certain hotel provides a space in its dining room for dancing and charges 50 cents admission to everyone entering the room. The prices charged for food are not increased to cover the cost of the entertainment furnished. In this case the amount paid for admission is not included in the price paid for refreshment but is this separate 50-cent charge. This charge, therefore, is taxable as an "amount paid for admission" under section 800 (a) (1) of the Act and the tax is 5 cents. (See Article 4.)

(3) A certain other hotel maintains in its lobby a dancing floor surrounded by tables and serves refreshments to its patrons during the dancing hours. No charge is made for dancing. This is a case of a public performance for profit where the amount paid for admission is wholly included in the amount paid for refreshment and there will be a tax, therefore, under these provisions of the Act.

(4) A certain other hotel conducts in a room adjoining its dining room, during tea time and in the evening, an entertainment in the form of dancing for its patrons. No charge is made to those desiring to dance. This case, as the one mentioned in the preceding example, is a case where the amount paid for admission to a public performance for profit is wholly included in the amount paid for refreshment, and there will, therefore, be a tax under these provisions of the Act.

(5) A certain college alumni association gives a dinner to its members and invited guests, at a fixed charge per plate, at a certain hotel. Entertainers supplied by the hotel perform, and the diners themselves dance in an open space provided in the room. In this case as the dinner is private there is no tax, whether the cost of the cabaret performance is included in the charges per plate or is paid for in a lump sum by the alumni association.

(6) A certain chamber of commerce gives a dinner, in honor of a distinguished man, at \$5 a plate. Tickets are sold to anybody desiring to attend. Entertainment is furnished by performers supplied by the hotel where the dinner is served. In this case, as the entertainment is supplied by the hotel, it is clearly for profit, and as the affair is also public there is a tax under these provisions of the Act. This tax applies to each individual payment made for a dinner ticket and is 15 cents (10 times $1\frac{1}{2}$ cents) in each case.

(7) A certain social club gives a dance at a hotel charging \$2 a ticket to both men and women. During an intermission in the dancing a light buffet supper is served. In this case the \$2 is clearly paid for admission, and there is a tax of 20 cents under section 800 (a) (1) of the Act (see Article 4). There is no tax in this case under these provisions of the Act.

TAXES ON CHARGES IN EXCESS OF ESTABLISHED PRICE.**Box-Office Sales.**

[§ 597] **Sec. 800 (a).** (4) A tax equivalent to 50 per centum of the amount for which the proprietors, managers, or employees of any opera house, theater, or other place of amusement sell or dispose of tickets or cards of admission in excess of the regular or established price or charge therefor, such tax to be returned and paid, in the manner provided in section 903, by the person selling such tickets.

[§ 598] **Art. 29. Basis and rate of tax.**—Where a proprietor, manager, or employee of any opera house, theater, or other place of amusement sells or disposes of any ticket or card of admission¹ thereto for an amount in excess of the established price of the admission² for which it is valid,³ the excess portion of such charge is subject to a tax of 50 per cent⁴ under these provisions of the Act. This tax is to be paid by the person selling or disposing of the ticket and is distinct from, and in addition to, the admission tax⁵ (imposed on the whole amount paid for, or on the whole established price of, the admission represented by the ticket), which is to be paid by the person to whom the ticket is sold or given.

Examples.—(1) The established price of the seats in the orchestra of a certain theater is \$2. These seats are put on sale three weeks in advance. The running attraction being very popular, the management decides one Friday night to increase, by 25 cents, the price of all orchestra seats for the next week still unsold. In this case, as an increase so made cannot affect the established price,⁶ that price remains \$2. Therefore, a tax of 12½ cents is due from the theater in the case of each ticket for one of these seats sold for \$2.25. In making its return at the end of the month the theater should add together all of these 12½-cent taxes and if the total sum ends in a half cent (as, for example, \$227.37½), then the tax to be paid, complying with section 1313 of the Act, will be one-half cent greater than this amount (in other words, \$227.38).

(2) A certain theater makes a practice of selling the first 10 rows in its orchestra to a certain ticket broker. The established price of these seats is \$2 and this price is printed on each ticket, but the broker is charged \$2.25, the theater claiming that this amount is for services rendered and not an excess charge. This 25 cents is clearly an excess charge⁷ under the provisions of the Act, and the theater is subject for each such sale to a tax of 50 per cent of 25 cents, or in other words, of 12½ cents.

Broker's Sales.

[§ 599] **Sec. 800 (a).** (3) Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of such theaters, operas, or other places of amusement, at not to exceed 50 cents in excess of the sum of the established price therefor at such ticket offices plus the amount of any tax imposed under paragraph (1), a tax equivalent to 5 per centum of the amount of such excess; and if sold for more than 50 cents in excess of the sum of such established price plus the amount of any tax imposed under paragraph (1), a tax equivalent to 50 per centum of the whole amount of such excess, such taxes to be returned and paid, in the manner provided in section 903, by the person selling such tickets.

¹ "Ticket or card of admission" includes in its meaning any pass or other token of a free admission.

² For meaning of "established price of an admission," see Article 17.

³ If the ticket or card of admission is valid for admissions of more than one established price, then the established price to be taken here is the highest of such established prices of admission.

⁴ Note that the rate of tax here is 50 per cent. The fact that this rate is a percentage makes possible a tax involving a fraction of a cent. As the tax is based on each excess charge imposed, several taxes are almost certain to be payable at the same time and, therefore, these fractional parts of a cent may affect the result, for they are to be preserved in computation, since section 1313 of the Act affects only the payment of the tax.

⁵ See Articles 4, 18, 23, and 24.

⁶ See Article 17, and particularly examples 1, 8, and 12 thereunder.

⁷ See note 1 on page 10.

[¶ 600] Art. 30. **Basis and rate of tax.**—Where a ticket or card of admission¹ to any place of amusement is sold, at any place other than a ticket office thereof² for an amount in excess of the sum of the established price of the admission³ for which such ticket or card is valid⁴ and any admission tax⁵ which may have already been paid on such ticket or card, the excess portion of such charge is subject to a tax under these provisions of the Act. This tax is to be paid by the person selling the ticket, and is distinct from and in addition to (1) any admission tax⁵ which may have already been paid on such ticket or card, and (2) the admission tax⁵ due, or in case an admission tax has already been paid the balance of the admission tax due, because of the present sale. Where the total amount (including any amount paid as a refund of admission tax "1," but excluding the amount paid as admission tax "2") paid by the buyer exceeds the sum of the established price of the admission and admission tax "1" by 50 cents or less this excess charge tax is 5 per cent⁶ of the amount of such excess.⁷ Where such excess is more than 50 cents, the tax is 50 per cent⁶ of the amount of the whole of such excess.⁷

Examples.—(1) A certain ticket broker purchases from a theater a block of tickets for seats in the orchestra, the established price of admission to which is \$2, and resells them at an excess charge of 50 cents per ticket. The taxes to be collected and paid by the theater and broker in this case are as follows:

THEATER.		Must pay to collector.	
Receives from broker.			
Established price.....	\$2.00	which it retains.	
Admission tax.....	.20	which it must pay to collector.....	⁸ \$0.20
Total.....	\$2.20	Total.....	\$0.20
BROKER.		Must pay to collector.	
Receives from customer			
Established price	\$2.00	which he retains.	
Additional charge .....	.20	which he retains as refund of admission tax paid to theater.	
Excess charge .....	.50	of which he must pay as tax ⁹ to collector.....	¹⁰ \$0.025
Balance of admission tax... ..	.05	which he must pay to collector.....	¹¹ .05
Total.....	\$2.75	Total.....	\$0.075

¹ "Ticket or card of admission" includes in its meaning any pass or other token of a free admission.

² "Any place other than a ticket office" of a place of amusement includes every place (other than the box office of the place of amusement if it should happen not to be under the same management as the place of amusement) which is not under the same management as the place of amusement, but does not include a place under the same management as the place of amusement, even if it is located elsewhere. In other words, except in the case of the box office, it is management and not location which is the test as to whether a particular ticket office is a ticket office of the place of amusement or not.

³ For meaning of "established price of an admission," see Article 17.

⁴ If the ticket or card of admission is valid for admissions of more than one established price, then the established price to be taken here is the highest of such established prices of admission.

⁵ See Articles 4, 18, 23, and 24.

⁶ Note that the rate of tax here is a percentage. The fact that this is so makes possible a tax involving a fraction of a cent. As the tax is based on each excess charge imposed, several taxes are almost certain to be payable at the same time and, therefore, these fractional parts of a cent may affect the result, for they are to be preserved in computation, since sections 1313 of the Act affects only the payment of the tax.

⁷ It should be particularly noted that this tax is based on the amount charged in excess of the established price, not in excess of the price the broker pays. The mere fact that the ticket broker himself may have paid the theater more than the established price does not affect whatever the tax to be paid by the ticket broker on his making an excess charge. In other words, if the theater makes an excess charge to the broker, and the broker makes an equal or greater excess charge to his customer, then both the theater and broker must pay an excess-charge tax on the amount of the excess charge of the theater.

⁸ The amount of this item is to be added to all other amounts, representing taxes on paid or free admissions received by the theater during the month, and the sum total entered as item a on Form 729 (Revised) being its return for that month.

⁹ If an attempt is made to pass on this tax to the customer, by making him pay 3 cents more, the excess charge becomes 53 cents instead of 50 cents and the rate of tax on such excess charge increases from 5 per cent to 50 per cent. See example 3.

¹⁰ The amount of this item is to be added to all other amounts due, during the calendar month, from the broker as taxes on charges in excess of established price, and the sum total entered as item c on Form 729 (Revised) being his return for that month. If the sum total comes out with a fractional part of a cent this fraction if less than $\frac{1}{2}$ cent is to be disregarded, but if $\frac{1}{2}$ cent or more, the sum total is to be increased by 1 cent (see section 1313 of the Act).

¹¹ The amount of this item is to be added to all other amounts, representing taxes on amounts paid for admission, received by the broker during the month, and the sum total entered as item a on Form 729 (Revised) being his return for that month.

(2) The same broker buys tickets from another theater for seats the established price of admission to which is likewise \$2. This theater, however, charges him \$2.25 apiece for them. He resells them, increasing the excess charge by 25 cents in each case. In this case the taxes to be collected and paid by the theater and broker are as follows:

THEATER.

Receives from broker.		Must pay to collector.	
Established price	\$2.00	which it retains.	
Excess charge .....	.25	of which it must pay as tax to collector	¹ \$0.125
Admission tax .....	.23	which it must pay to collector .....	.23
Total	\$2.48	Total	\$0.355

BROKER.

Receives from customer.		Must pay to collector.	
Established price	\$2.00	which he retains.	
Additional charge .....	.23	which he retains as refund of admission tax paid to theater.	
Excess charge .....	.50	of which he must pay as tax ³ to collector	⁴ \$0.025
Balance of admission tax ⁵ .....	.02	which he must pay to collector	⁶ .02
Total	\$2.75	Total	\$0.045

(3) The same broker buys tickets from another theater for seats the established price of admission to which is likewise \$2. This theater, however, charges him \$2.50 apiece for them. He resells them increasing the excess charge by \$1.25 in each case. In this case the taxes to be collected by the theater and broker are as follows:

THEATER.

Receives from broker.		Must pay to collector.	
Established price	\$2.00	which it retains.	
Excess charge .....	.50	of which it must pay as tax to collector	¹ \$0.25
Admission tax .....	.25	which it must pay to collector .....	.25
Total	\$2.75	Total	\$0.50

BROKER.

Receives from customer.		Must pay to collector.	
Established price	\$2.00	which he retains.	
Additional charge .....	.25	which he retains as refund of admission tax paid to theater.	
Excess charge	1.75	of which he must pay as tax ⁷ to collector	⁸ \$0.875
Balance of admission tax ⁹ .....	.13	which he must pay to collector	¹⁰ .13
Total	\$4.13	Total	\$1.005

¹ The amount of this item is to be added to all amounts due, during the calendar month, from the theater as taxes on charges in excess of established price and the sum total entered as item d on Form 729 (Revised) being its return for that month. If the sum total comes out with a fractional part of a cent this fraction if less than $\frac{1}{2}$ cent is to be disregarded, but if $\frac{1}{2}$ cent or more, the sum total is to be increased by 1 cent (see section 1313 of the Act).

² See note 8 on page 36.

³ See note 9 on page 36.

⁴ See note 10 on page 36.

⁵ The basis of the tax on an amount paid for admission is the whole of the amount paid for a single admission. (See Article 4 and particularly example 4 thereunder.) In this case the total admission tax due is 25 cents, being based on \$2.50—such amount of the final charge as does not represent any admission tax. As 23 cents has already been paid as an admission tax, the balance due is evidently 2 cents (not 3 cents).

⁶ See note 11 on page 36.

⁷ See note 9 on page 36.

⁸ See note 10 on page 36.

⁹ The basis of a tax on an amount paid for admission is the whole of the amount paid for a single admission. In this case the total admission tax due is 38 cents, being based on \$3.75—such amount of the final charge as does not represent any admission tax. As 25 cents has already been paid as an admission tax, the balance due is evidently 13 cents.

¹⁰ See note 11 on page 36.

(4) The same ticket broker purchases from another theater a block of tickets for seats, the established price of admission to which is likewise \$2, and resells them at an excess charge of 50 cents per ticket. He has an arrangement with the theater, however, by which half of this excess charge so received by him is to be paid to the theater as a rebate. In this case this rebate of 25 cents received by the theater is in fact an excess charge made by it. The theater, therefore, will be subject to a tax of 50 per cent of that amount ($12\frac{1}{2}$ cents) as a tax on an excess charge. The final result as to taxes, etc., will be the same therefore as that shown under example 2 above.

(5) A theater-ticket agency procures tickets from various theaters with the privilege of returning, an hour before the performance starts, all tickets for that performance then unsold. Such agency charges for each ticket sold 10 cents more than the sum of the established price and the amount paid to the theater as an admission tax, and terms this 10-cent charge a "service charge." In this case it is clear that the 10-cent advance is in fact an excess charge (see note 4, page 10) and that the agency is liable for an excess-charge tax of $\frac{1}{2}$ cent. It must also, of course, collect from the purchaser the 1 cent balance of admission tax due.

(6) A certain lodge (which does not fall within the classes of organizations mentioned in the exemption provisions of the Act) contracts with a theater to pay \$1,400 for its entire seating capacity for a particular performance of a popular attraction. This contract was made before any tickets for this performance had been put on sale or distributed in any way. The theater on making the contract notifies the collector of internal revenue on Form 754 (Revised) that such contract is being made (see Article 64). The lodge takes the theater's tickets for that performance and reprints them to the extent necessary to increase the price of each seat 50 cents. It sells the tickets so reprinted to its members and friends, and to increase the proceeds auctions off a large number of the choicest seats. In this case the established price of all seats is the price so printed on the tickets by the lodge and, therefore, no excess-charge tax is due for the sale at that price of any ticket. In the case of the auctioned tickets, however, an excess-charge tax will be due, in accordance with the provisions of Article 30, on all amounts realized at such sale in excess of the price so established by the lodge. (See also example 1, Article 12.)

[¶ 601] **Addition to Article 30.** (T. D. 2924, approved Feb. 9, 1920, added the following to Reg. 43 (1), Art. 30).—(7) Where a ticket is sold by a theater to a broker at the established price and thereafter passes through the hands of several other brokers before being sold to the user, each broker who sells the ticket for an amount in excess of the established price must keep record, make return, and pay the tax as provided in articles 58 and 62 of Regulations 43 (revised), Part 1. Each broker in paying the tax on the excess charge for which the ticket is sold by him may take credit for the amount of any tax paid under section 800 (a), paragraph (3), of the Revenue Act of 1918, with respect to excess charges, by previous vendors of the ticket.

For example: If a ticket, the established price of which is \$2.00, is sold by a theater to broker "A" for the established price, the theater would collect from the purchaser 20 cents tax and pay same to the collector.

Broker "A" on re-selling the ticket to broker "B" for \$2.50 would collect from the purchaser 25 cents tax, 20 cents of which he would retain to reimburse himself for the tax paid to the theater, and 5 cents of which he would pay to the collector, together with $2\frac{1}{2}$ cents representing the tax for which he is liable as vendor, thus realizing a profit of $47\frac{1}{2}$ cents on the transaction.

Broker "B" on selling the ticket to broker "C" for \$4.00 would collect from the purchaser 40 cents tax, 25 cents of which he would retain to reimburse himself for the tax paid to broker "A" and 15 cents of which he would pay to the collector, together with $97\frac{1}{2}$ cents, representing the tax for which he is liable as vendor after taking credit for the $2\frac{1}{2}$ cents tax on the excess charge for the ticket already paid by broker "A," thus realizing a profit of $52\frac{1}{2}$ cents on the transaction.

Broker "C" on selling the ticket to broker "D" for \$5.00 would collect 50 cents tax from the purchaser, 40 cents of which he would retain to reimburse himself for the tax paid to broker "B," and 10 cents of which he would pay to the collector, together with 50 cents representing the tax for which he is liable as vendor after taking credit for the $2\frac{1}{2}$ cents tax paid by broker "A" and the $97\frac{1}{2}$ cents tax paid by broker "B" on the excess charge for the ticket, thus realizing a profit of 50 cents on the transaction.

Broker "D" on selling the ticket to the user for \$6.00 would collect 60 cents tax from the purchaser, 50 cents of which he would retain to reimburse himself for the tax paid to broker "C" and 10 cents of which he would pay to the collector together with 50 cents representing the tax for which he is liable as vendor after taking credit for the $2\frac{1}{2}$ cents tax paid by broker "A," the $97\frac{1}{2}$ cents paid by broker "B" and the 50 cents tax paid by broker "C" on the excess charge for the ticket, thus realizing a profit of 50 cents on the transaction.

Scope of Taxes.

[¶ 602] Art. 31. **Scope as compared with Taxes on Admissions.**—The Taxes on Admissions apply in general to any "amount paid for admission to any place," with certain general exemptions. These Taxes on Charges in Excess of Established Price apply to excess charges on "tickets or cards of admission to theaters, operas, or other places of amusement," with the same general exemptions. It is clear, therefore, that the class to which these taxes apply is a smaller class than that affected by the Taxes on Admissions and that it lies entirely within that larger class. In other words, while there are many cases where an admission tax is due which do not fall within the scope of these excess-charge taxes, all cases where these taxes apply fall within the scope of the Taxes on Admissions. As these taxes are clearly in addition to the Taxes on Admissions and not in lieu of them, in all cases which come within the scope of both of these kinds of taxes a tax of each kind must be paid.

EXEMPTIONS.¹

Taxes to Which Exemptions Apply.

[¶ 603] Sec. 800. (b) No tax shall be levied under this title in respect to any admissions all the proceeds of which inure exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, societies for the prevention of cruelty to children or animals, or exclusively to the benefit of organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, none of the profits of which are distributed to members of such organizations, or exclusively to the benefit of persons in the military or naval forces of the United States, or admissions to agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.

[¶ 604] Art. 32. **Meaning of "all the proceeds."**—As appears from Article 1, the taxes imposed by section 800 (a) of the Act naturally divide into two general classes, "Taxes on Admissions" (see Articles 4-28) and "Taxes on Charges in Excess of Established Price" (see Articles 29-31). These two classes

¹ The exemption concerning "outdoor general amusement parks" and amusements therein, contained in the Revenue Act of 1917, is not contained in the Revenue Act of 1918, and is no longer in force.

of taxes not only differ in their character but also in their incidence. The admission taxes are imposed on and paid by the persons admitted or entitled to admission, while the excess-charge taxes are imposed on and paid by the persons making the excess charges. Moreover, the proceeds from admissions and the proceeds from excess charges may, and in the case of brokers' sales commonly do, go to separate and distinct persons or organizations. Evidently it was not intended that the destination of the proceeds of excess charges made by a ticket broker should affect any exemption to which the admissions proper might be entitled. It is necessary, therefore, in order to give the above provision concerning exemptions (section 800 (b)), a reasonable effect, to interpret the phrase "all the proceeds" as meaning (1) in the case of Taxes on Admissions, "all the proceeds (after payment of reasonable expenses)"¹ of admission charges, and (2) in the case of Taxes on Charges in Excess of Established Price, "all the proceeds (after payment of reasonable expenses)"¹ of such excess charges." In other words, whether or not there is exemption from either class of tax must depend on the destination of the proceeds of the charges on which that particular tax would be based. The application of the exemptions, provided by section 800 (b), to each of these two classes of taxes in turn is given in the two following articles:

[¶ 605] Art. 33. Taxes on Admissions.—Admissions are exempt from the Taxes on Admissions (see Articles 4-28) whenever all the proceeds (after payment of reasonable expenses) of such admissions go in a way that satisfies the provisions of section 800 (b). Nor would it affect this result if some broker or other person should secure tickets for some of these admissions and should sell them at a price in excess of the established price, keeping the proceeds of such excess charges for himself. On the other hand, it is obvious that even though all the proceeds (after payment of reasonable expenses) of excess charges should go in a way that satisfies the provisions of section 800 (b), the admissions proper are taxable unless all the proceeds (after payment of reasonable expenses) of such admissions themselves go in such a way.

Examples.—(1) A woman's auxiliary of a charitable hospital in a large city gives an entertainment for the benefit of the hospital. The established price of admission to all seats is \$3. This organization, which qualifies as exempt under section 800 (b), is largely made up of society women, and seats are very much in demand. A certain ticket broker secures a large number of them and sells them at \$4 apiece. In this case the admissions proper are exempt from the Taxes on Admissions, in spite of the fact that the proceeds of the excess charges made by the broker go into his pocket. Therefore not only no admissions tax need be charged to the broker or anyone else on the original sale of the tickets, but no such tax is to be collected by the broker from a customer on selling him a ticket. However, he must pay an excess-charge tax of 50 cents on each ticket sold.²

(2) A certain society circus, the established price of admission to which is \$5, is given for the benefit of the Salvation Army. Many of the tickets to this circus are auctioned off by the management at a large advance in price and the proceeds of the auction also given the Salvation Army. In this case no taxes are imposed on either the admission proper or the excess charges.²

[¶ 606] Art. 34. Taxes on Charges in Excess of Established Price.—Charges in excess of the established price are exempt from the taxes imposed

¹ It is clear that by "proceeds" the gross proceeds cannot be intended, but only the net proceeds after payment of reasonable expenses.

² Proceeds divided, see example 2, Article 35; tax on excess charges, see Article 30; method of securing exemption, see Article 47; see also the example under Article 34; printing tickets, see example 4, Article 51.

on such charges by section 800 (a) of the Act (see Articles 29-31) whenever all the proceeds (after payment of reasonable expenses) of such excess charges go in a way that satisfies the provisions of section 800 (b). And this is true even though the proceeds of the admissions themselves do not go in a way that satisfies the provisions of sections 800 (b). In other words, even though the charges for admissions proper are not exempt, because not going in a way satisfying section 800 (b), the excess charges will be exempt if the proceeds of such excess charges themselves go in a way which satisfies section 800 (b). On the other hand, even though all the proceeds (after payment of reasonable expenses) of admissions proper go in a way that satisfies the provisions of section 800 (b), the excess charges are taxable unless all the proceeds (after payment of reasonable expenses) of such excess charges themselves go in such a way.

Example.—A certain charitable organization, which qualifies as exempt under section 800 (b), purchases from the box office of a theater, in the regular way and at the established price, fifty \$2 tickets. It sells them all for \$5 apiece (exclusive of any admission tax) for the benefit of the charity. In this case an admission tax of 20 cents, based on the \$2 paid to the theater, must be paid on each ticket at the time of its purchase, and on the resale of the ticket by the charitable organization it must collect the balance of admission tax due on that ticket, namely, 30 cents. (Of course, it can also if it desires collect 20 cents more to cover the admission tax it paid to the theater.) On the other hand, no excess-charge tax is due from the charitable organization on account of the sale of these tickets at an excess charge.¹

Organizations Other Than Agricultural Fairs.

[¶ 607] **Art. 35. Basis of exemption.**—Section 800 (b) of the Act expressly bases any exemption² of admissions (or excess charges) from tax on the specific fact that the proceeds of such admissions (or excess charges) inure exclusively to organizations or persons of certain classes. In other words, the controlling factor is not the mere use to which the money is to be put, nor the character of the organization or person that is collecting the sums paid, but solely the character of the organization or person to whom the benefit of such sums is to exclusively inure.

Examples.—(1) A Chautauqua bureau contracts with an association in a certain town to give a Chautauqua course in that town. The contract provides that the bureau is to do the advertising, print the tickets, sell all (a stated number) of the course tickets to the local association, sell the single-session tickets to the public, and to control the admissions by taking the tickets at the entrance. The local association agrees to buy the course tickets at the established price. The proceeds of the single admission tickets are to be divided between the Chautauqua bureau and the local association in accordance with a fixed percentage. The Taxes on Admissions (see Articles 4-28) apply in this case, unless both the Chautauqua bureau and the local association are exempt organizations within the meaning of section 800 (b) of the Act. Furthermore, if the local association resells the course tickets at a price in excess of the established price it must collect the balance of admission tax due because of this excess and is also liable for the Taxes on Charges in Excess of Established Price (see Articles 29-31) unless so exempt. If, on the other hand, the contract had provided that all the proceeds of the single-session tickets were to go to the Chautauqua bureau, then the question as to whether the

¹ Tax on excess charges, see Article 30; method of securing exemption, see Article 47; see also examples under Article 33; printing tickets, see example 4, Article 51.

² Other than of admission to agricultural fairs.

Taxes on Admissions applied to the Chautauqua course or not would have depended entirely on whether that bureau was an exempt organization or not.¹

(2) A society which is charitable within the meaning of Articles 36 and 39, gives an entertainment with talent secured from a lyceum bureau at a fixed price, the proceeds of the entertainment, after the payment of expenses, to be put into the treasury of the society. Unless this price is clearly excessive and therefore not a reasonable expense, admissions to the entertainment are exempt from tax as inuring exclusively to the benefit of a charitable society. If, however, the contract with the lyceum bureau had provided that any given percentage, however small, of the gross or net proceeds of the entertainment were to inure to it, then, as it would have thus become a sharer in the proceeds, the admissions would not have been exempt from tax unless the lyceum bureau were also an exempt organization.

(3) A certain charitable organization, qualifying as exempt under section 800 (b) of the Act, enters into an arrangement with a certain moving-picture theater to secure 60 per cent of the net proceeds of a certain evening's exhibition in return for selling a large number of tickets for that occasion. In this case, as the proceeds are divided between the theater and the charitable organization and, therefore, do not inure exclusively to the benefit of the latter, the admissions are taxable.

(4) When all the proceeds (after payment of reasonable expenses) of an entertainment given by an organization not qualifying as exempt under section 800 (b) of the Act are turned over to an organization so qualifying, whether in the form of cash, of a piano, or of any other kind of property, admissions to such entertainment are not taxable. But in such case the claim for exemption must be joined in by the organization qualifying as exempt. See Article 47.

(5) A benevolent violinist gives a concert and hands the net proceeds to a poor family for its support. The admissions to this concert are taxable.

(6) A historian desiring to educate the public on a certain phase of history delivers lectures in order to raise money to print a book which he intends to publish and give away to the general public. Admissions to his lectures are taxable.

(7) An organization of soldiers holds an entertainment and turns the entire proceeds over to an athletic club for use in building a new clubhouse. Admissions to this entertainment are taxable, for though the entertainment is under the auspices of soldiers the proceeds do not inure to them but to a non-exempt organization.

[¶ 608] Art. 36. **Necessary character of organization.**—For an organization to be considered a religious, educational, or charitable institution, society, or organization within the meaning of the Act: (1) It must have a definite organization, with officers, directors, or trustees, and the usual essential features (incorporation not being essential) of an association of its class; (2) it must have a purpose which both as expressed and as put into practice is religious or educational or charitable, or partaking of the character of more than one of these three; and (3) the provisions of its charter, constitution, or by-laws must be such as to require that its funds be used solely in furtherance of its aforesaid purpose, none of them being paid or otherwise distributed to any of its members except as charity or as reasonable compensation for services actually rendered, and these provisions must be actually complied with.² For an organization to be considered a "society for the prevention of cruelty to

¹ Chautauqua must register; see example 1, Article 60.

² The substance of condition 3 is briefly expressed by the phrase, "not for profit."

children or animals" it must comply with conditions 1 and 3 of the preceding sentence, and also with condition 2, except that in its case the purpose to be expressed and put into practice must be the specific purpose of the prevention of cruelty to children or animals, or both, and not one of the three general purposes mentioned in condition 2. It is perfectly apparent from the above conditions, and should be carefully noted, that the mere fact that an organization is not for profit is not enough to make admissions to entertainments given by it exempt from tax under the Act. For such admissions to be exempt the organization must also comply with conditions 1 and 2 above. There is no requirement, expressed or implied, that an institution, society, or organization to be included within these exemption provisions must be organized or operating in the United States.¹

[¶ 609] **Art. 37. Religious organizations.**—Admissions, or excess charges, all the proceeds of which (after payment of reasonable expenses) inure exclusively to the benefit of religious institutions, societies, or organizations are exempt from tax. Churches and theological seminaries are the commonest cases of religious institutions. Missions and missionary societies also clearly fall within the exemption. Church societies are religious societies only if they share in the religious purpose of the church. Nation-wide organizations which are not church organizations but which have as their purpose the furtherance of religion are religious societies.¹

Examples.—(1) The members of a certain church form a club for social and athletic purposes and hold their meetings in one of the church buildings. In order to raise money for club purposes they give dances and other entertainments. In this case, as the club is not formed or operated for religious purposes, but purely for social and athletic purposes, admissions to these dances and entertainments are not exempt on the ground that the club is a religious organization.

(2) A certain church organizes a men's club to increase community feeling, and while the meetings are opened with prayer the club itself has no religious purpose and members of all religions and denominations are entitled to membership. This club, though holding its meetings in the church building itself, is not a religious organization within the meaning of the Act.

(3) A certain church organizes a men's Bible class, which meets every Sunday to study the Bible. This class holds an entertainment in order to raise money to buy Bibles and maps to be used in its work. Admissions to the entertainment are exempt from tax, for the class is a religious organization within the meaning of the Act.

(4) If in the case mentioned in example 3 the money was to be raised to give certain members of the Bible class a summer outing, and the proceeds were actually turned over to such members for that purpose, the admissions would not be exempt from tax. For in such a case the proceeds of admissions would not inure exclusively to the benefit of the Bible class itself.

(5) A club organized for the sole purpose of raising money to support a missionary is a religious organization within the meaning of the Act.

(6) A Young Men's Christian Association or Young Men's Hebrew Association is a religious organization within the meaning of the Act.

[¶ 610] **Art. 38. Educational organization.**—Admissions or excess charges, all the proceeds of which (after payment of reasonable expenses) inure exclusively to the benefit of institutions, societies, or organizations that are educational within the meaning of the Act as stated in this article and Article 36, are exempt from tax. Schools, colleges and universities, qualifying under Article 36, fall within this exemption. The same is true of any organiza-

¹ For method of securing exemption, see Article 47.

tion whose dominant purpose is the education of its members or of other persons. Education here includes musical education. It also includes physical education, so any organization, devoted to physical education pure and simple, and complying with Article 36, is educational within the meaning of the Act; but if the element of sport enters into its purposes then it cannot be considered exempt as an educational society or organization. Admissions, or excess charges, are not exempt merely because the proceeds are to be used for an educational purpose—the character of the organization to which they will inure is the test, not the purpose merely. Admissions, or excess charges, to contests or entertainments are exempt from tax where the proceeds are to be expended for athletic or other school, college, or university purposes by, or under the direct supervision of, the authorities of a school, college, or university which qualifies under Article 36.¹

Examples.—(1) Admissions charged to a football game where the net proceeds are expended for athletic purposes under the direct supervision of the faculty of a college (neither organized nor operated for profit) are exempt from tax.

(2) Admissions to a college baseball game the proceeds of which inure to a students' athletic association to be spent in their discretion, without any college supervision, for the support of athletic teams or other interests of the members of the association, are taxable.

(3) A private school run for the profit of its proprietors (in other words, not qualifying under condition 3 of Article 36, is not an educational institution, society, or organization within the meaning of the Act.

(4) A music-festival association is organized and operates in a city with the purpose of educating the community up to good music and cultivating its musical taste. It also complies with conditions 1 and 3 of Article 36. This association is an educational organization within the meaning of the Act. Admissions, therefore, to a music festival given by it are exempt from tax.

(5) Where an association maintaining a zoological park is a corporation not for profit, whose purpose is to exhibit animals and give instruction in connection therewith, admissions to the park are exempt from tax because they inure to an educational institution.

(6) Where the pupils in a certain room in a certain school form an organization for pleasure and social purposes and give an entertainment, the proceeds of which are to be used to give a picnic, the admissions thereto are taxable, for such organization is not educational.

(7) Admissions to an entertainment given by a college fraternity for its benefit are taxable, for such a fraternity is not educational within the meaning of the Act.

(8) The captain of a high-school cadet company gives a dance for his company, issuing tickets at \$1.50 each. The net proceeds, if any, are to be expended entirely for the personal benefit of the members of the company. In this case the admission are taxable.

(9) Admissions charged to an illustrated lecture, educational in character, where the net proceeds go to the lecturer, who is neither in the military nor naval forces of the United States, are taxable.

(10) A Young Men's Christian Association or Young Men's Hebrew Association is an educational organization within the meaning of the Act.

(11) A certain college alumni association gives an entertainment to raise money for a scholarship fund. This fund is used to provide scholarships of \$600 a year. This \$600 is paid in each case to some worthy young man to be used by him in paying his living expenses and tuition at the college of which the members of the association are graduates. Admissions to such an enter-

¹ For method of securing exemption, see Article 47.

tainment are taxable, as the proceeds inure directly to the personal benefit of the young men holding the scholarships.

(12) The activities of a social settlement, incorporated "not for profit," consist chiefly of classes in English, mathematics, modern languages, manual training, sewing, cooking, etc. Entertainments are held from time to time to raise money to help carry on these activities. Admissions to such entertainments are exempt from tax, for the settlement is clearly educational within the meaning of the Act.

(13) A certain class in a county high school gives an entertainment of which the net proceeds are to be used to buy a victrola to be given to the school. In this case, if the principal of the school has joined, on behalf of the school, in an affidavit for exemption, a certificate of exemption can be secured which makes the admissions exempt from tax. If, however, the victrola was to become the property of the class, to be removed from the school on its graduation, the exemption would not apply.

[¶ 611] Art. 39. **Charitable organizations.**—Admissions, or excess charges, all the proceeds of which (after payment of reasonable expenses) inure exclusively to the benefit of charitable institutions, societies, or organizations are exempt from tax. An organization which gives assistance to its members and their dependents only is not a charitable organization within the meaning of the Act.¹

Examples.—(1) Where the chief purpose of a fraternal organization, operating under the lodge system, is to give assistance to its worthy and indigent members and their dependents, it is not a charitable organization within the meaning of the Act, for aid limited to its own members and their dependents is not charitable within the meaning of the Act.

(2) A fraternal organization not qualifying as exempt under the provisions of the Act gives an entertainment and distributes the proceeds to certain deserving poor people whose names it has obtained from the Associated Charities. In this case the admissions are taxable, for the proceeds do not inure to a charitable organization. If, however, the net proceeds had been turned over to the Associated Charities to be distributed by it in aid of the poor, the admissions would have been exempt from tax.

(3) An association organized and operated for the relief of war-stricken people abroad, and also complying with conditions 1 and 3 of Article 36, gives an entertainment and uses the proceeds in furtherance of its work. Admissions to this entertainment are exempt from tax, for it is a charitable organization within the meaning of the Act.

(4) A relief association, organized by the police of a certain city for the benefit of themselves and their dependents, gives a baseball game and turns the proceeds into its treasury to be used to further its purposes. As its relief is limited to its members and dependents, the admissions to the game are taxable.

[¶ 612] Art. 40. **Symphony orchestra organizations.**—Admissions, or excess charges, all the proceeds of which (after payment of reasonable expenses) inure exclusively to the benefit of an organization conducted for the sole purpose of maintaining a symphony orchestra and receiving substantial support from voluntary contributions, none of the profits of which are distributed to members of such organization, are exempt from tax. The name by which an organized group of musicians is called is not the test of whether or not such group is a symphony orchestra. To be a symphony orchestra it must have a personnel of sufficient size, quality, and ability to capably render symphonies, and must make them a regular part of its program. Bands and ordinary orchestras are clearly not included in the exemption.¹

¹ For method of securing exemption, see Article 47.

[¶ 613] Art. 41. **Soldiers and sailors.**—Admissions, or excess charges, all the proceeds of which (after payment of reasonable expenses) inure exclusively to the benefit of a person or persons in the military or naval forces of the United States are exempt from tax. Soldiers and sailors, of course, constitute the chief classes of persons covered by this exemption, but it also includes nurses, male or female, and other members of such military or naval forces not ordinarily included within the term “soldiers and sailors.” It does not include persons formerly in service but now discharged, though it does include persons in the reserve. It applies equally whether the proceeds inure exclusively to the benefit of a single person or of many persons (within the exempt class).¹

[¶ 614] Art. 42. **Admissions charged by State or municipality not exempt.**—The fact that the authority charging admissions, or receiving the exclusive proceeds thereof, is one of the United States, or a political subdivision thereof, or a municipality, or a State or municipal institution does not make such admissions exempt from tax. Unless exempt on some other ground such admissions are taxable. For, as the Revenue Act of 1918 provides no exemption for such cases, the only basis for such an exemption of admissions charged by public authorities would be the unconstitutionality of legislation taxing a State or its governmental functions. The taxes imposed by section 800 (a) (1), (2), (5), and (6), however, are imposed on the individuals paying for admission, being admitted, or having the right to the use of a box or seat, respectively. These taxes can not be passed on by such individuals to the authority charging admissions to the place, nor can these taxes in any other way directly reduce the proceeds of such admissions. As the taxes are not imposed on, and do not directly reduce the proceeds inuring to, the authority charging admissions, where a State happens to be that authority, they are not taxes on a State. There can be, therefore, no exemption on that ground.

[¶ 615] Art. 43. **Admissions charged by United States not exempt.**—The fact that the authority charging admissions or receiving the exclusive proceeds thereof is the United States or an agency thereof does not make such admissions exempt from tax. Unless exempt on some other ground such admissions are taxable. For the Revenue Act of 1918 provides no express exemption for the United States or its agencies, and the only basis for an implied exemption would be the view that the Act ought to be interpreted in such a way as not to impose a tax on the Government itself. But, as clearly appears in Article 42, the taxes imposed by section 800 of the Act are, in such cases, imposed on the individuals and not on the Government or its agency.

Agricultural Fairs.

(Sec. 800 (b), par. 603)

[¶ 616] Art. 44. **Basis of exemption.**—In considering exemptions with regard to agricultural fairs we are only concerned with the Taxes on Admissions, for the Taxes on Charges in Excess of Established Price do not apply to agricultural fairs (see Article 31). Admissions to agricultural fairs, none of the profits of which are distributed to stockholders or members of the association conducting the same, are exempt from any tax under section 800 (a). In this case the exemption is based solely on the facts (1) that the admissions are to an agricultural fair, and (2) that the fair is not run for profit. No requirement is made (as is done in the case of the other exemptions) that the proceeds of the admissions must inure exclusively to a certain type of organization or individual. In the case of admissions to an agricultural fair the proceeds may go anywhere, without affecting the exemption from taxation, provided they are not distributed to the stockholders or members of the fair association. As such distribution can rarely if ever take place in the case of

¹ For method of securing exemption, see Article 47.

agricultural fairs which are organized by a State, county, or city, admissions to agricultural fairs so organized will ordinarily be exempt from tax.

[¶ 617] Art. 45. **Meaning of "agricultural fairs."**—The term "agricultural fairs" includes in general all exhibitions from farm produce, live stock, poultry, flowers, or the like, held for the promotion of agriculture (which includes horticulture). It includes within its meaning any exhibition of animals, of a species whose chief utility is in connection with agriculture, held by an association organized to improve that species of animal and to disseminate knowledge concerning its breeding. But exhibitions of prepared or preserved foods or food products only, as distinguished from live stock and farm and garden produce, are not "agricultural fairs."

Examples.—(1) A retail grocers' association gives a food show lasting a week in a large hall in a city. The raw food products, the processes of manufacture, the finished food products, and the foods prepared for the table are all exhibited. Such an exhibition is not an agricultural fair within the meaning of the Act.¹

(2) A horse show held in a large city, where most of the horses exhibited are fancy riding and driving horses and the show is largely a social event, is not an agricultural fair within the meaning of the Act

(3) A horse fair held by a society organized to improve the quality of farm animals, the animals exhibited being chiefly of that class, is an agricultural fair within the meaning of the Act.

(4) A certain dog fanciers' association gives a dog show in a city. A large majority of the dogs exhibited belong to fancy and house varieties. Such a show is not an agricultural fair within the meaning of the Act.

(5) A poultry fanciers' association gives a poultry show, which is held with a particular view to teaching poultry farmers how to secure the largest possible number of eggs. Such a show is an agricultural fair within the meaning of the Act.

[¶ 618] Art. 46. **Meaning of "admissions to agricultural fairs."**—The term "admissions to agricultural fairs" includes admissions to the fair grounds as a whole and to any separate enclosure containing customary fair features conducted by the fair association itself, and also the use of seats (see Article 8) controlled by such association in either such main fair grounds or such enclosure. The term does not include admissions to any place, even though within the fair grounds itself, and even though conducted by the fair association itself, unless the place constitutes a customary feature of an agricultural fair. Admissions to places not conducted by the fair association itself, whether conducted with its consent or even under a contract with it or not, are not included within the meaning of the term. Nor does the term include admissions to race meets or other entertainments conducted by a fair association on its grounds or elsewhere at a time when no agricultural fair is in progress.

Examples.—(1) An agricultural fair association contracts with a wild-animal show for an exhibition of the animals to take place at the fair grounds every day during the duration of an agricultural fair given by the association. The contract provides that a certain per cent of the gross income is to go to the fair association. Admissions to such an exhibition, even though held in the fair grounds, are not "admissions to agricultural fairs" and are therefore not exempt on that ground.

(2) A large manufacturer of breakfast foods has an exhibit of his foods and processes of manufacture inside an agricultural fair grounds during the

¹ See examples 2 and 3 under Article 46.

progress of a fair. Admissions charged to such an exhibition are not included within this exemption.¹

(3) An agricultural fair conducts in the fair grounds during fair week under its own management as a part of the fair itself an exhibition and demonstration of foods and food preparation. Admissions to such an exhibition are "admissions to agricultural fairs" and are exempt as such.²

(4) An agricultural fair conducts during fair week in an enclosure in the fair grounds an exhibition of pedigreed sheep. Admissions to such enclosure are "admissions to agricultural fairs" and are exempt as such.

Method of Securing Exemption.

[¶ 619] Art. 47. **Affidavit claiming exemption and certificate of exemption.**—The benefit of an exemption³ from Taxes on Admissions⁴ or Taxes on Charges in Excess of Established Price⁵ can only be secured by executing and filing an affidavit, on Form 755 (Revised)⁶ claiming such exemption with regard to admissions to a stated place for one or more stated occasions. This affidavit must in every case be executed by an officer or duly authorized agent of the organization (or by the individual or one of the individuals) in control of the admissions or excess charges in question. Where the claim for exemption is based on the character of another organization (or another individual or other individuals) not in such control, then an officer or duly authorized agent of such other organization (or such other individual or one of such other individuals) must join in the making of the claim, as indicated on Form 755 (Revised). In the particular case where the claim is based on the character of a school, college, or university, the president or other executive officer (not a mere teacher or professor) must be the person to represent it in the making of the claim. In every case where the character of an organization is concerned, a statement of its disbursements for the preceding year must be attached to the affidavit and filed along with it. This affidavit must be filed with that collector of internal revenue with whom an application for registry would be filed if a certificate of registry were desired instead of a certificate of exemption. (See Article 59). It should be filed a considerable length of time prior to any occasion for which exemption is desired. Unless such affidavit be filed long enough before any such occasion to permit a full advance investigation of the circumstances and the making of a decision based thereon and unless such decision is in favor of the claim, all the applicable requirements of the Act and of these regulations must be complied with, in connection with such an occasion, and whoever is in control of admissions or whoever sells tickets or cards of admission at an excess charge will be held responsible for the payment of all taxes due in case the claim for exemption is not allowed. If the claim for exemption is allowed the collector will send to the person filing the claim a certificate of exemption on Form 755A (Revised). If the claim for exemption is disallowed notice of that fact will be given on the same form.

Examples.—(1) A certain social club gives an entertainment at which moving pictures are exhibited and charges \$1 for admission. It contends that admissions to this entertainment are exempt from tax on the ground that the net proceeds are to be given to the local chapter of the Red Cross. In such case no claim for exemption can be considered unless the affidavit claiming such exemption is joined in by one of the officers of the Red Cross chapter.

(2) A football game is to take place at a certain college between its team and that of a rival college. In this case, if an exemption certificate is sought, the president of the college where the game is to be held must execute the affi-

¹ See example 3 below and example 1 under Article 45.

² See example 2 above and example 1 under Article 45.

³ See Articles 32-46.

⁴ See Articles 4-28.

⁵ See Articles 29-31.

⁶ To be obtained from any collector of internal revenue, or, if the place is leased for one or more particular occasions (see Article 64), from the lessor.

davit for exemption. If the proceeds are to be divided then the president of the rival college must join in the affidavit. See also example 1, Article 35.

(3) The pupils in a certain room in a certain school give an entertainment the proceeds of which are to be used in buying a victrola to be given to the school. In this case, if it is desired to claim that the proceeds are exempt, the principal of school must, on its behalf, join in affidavit for exemption.

(4) A certain lodge gives a benefit for a company of United States soldiers. In this case the claim for exemption on Form 755 (Revised) must be executed by an officer of the lodge and joined in by an officer or other duly authorized member of the company of soldiers.

TICKETS AND SIGNS.

[¶ 620] Sec. 800. (d) The price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back thereof, together with the name of the vendor if sold other than at the ticket office of the theater, opera, or other place of amusement. Whoever sells an admission ticket or card on which the name of the vendor and price is not so printed, stamped, or written, or at a price in excess of the price so printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.

[¶ 621] Art. 48. **Necessity for tickets—Separate or separable tickets.**—In the case of every place admission to which¹ is subject to tax, the proprietor or manager must provide a ticket or card of admission to evidence every right to admission,² whether paid or free, which is subject to tax. In the first instance, a single ticket or card (in form, for example, of a season ticket or pass) may represent more than one right to a taxable admission. But before being enjoyed each such right to admission must be evidenced by a distinct ticket or card (see Article 54). It may be printed on the same piece of card or paper with other tickets or cards, but in such case it must be capable of being detached, and when detached must evidence a single admission. In other words, any ticket or card which is issued to evidence more than one taxable admission must, to entitle the holder to such admission, be separable into as many units as there are admissions (and each unit or ticket must comply with the provisions of Article 50-51, and of 52, when applicable. This is an administrative necessity for the proper enforcement of the taxes imposed by the Act. For the same reason, a separate or separable ticket or card of admission must be likewise provided³ in due course by the proprietor or manager of any opera house or other place of amusement, in which a person has the permanent use or a lease for the use of a box or seat, to evidence every right of such person to use such box or seat. Such tickets or cards of admission will be absolutely required in all cases falling within the above, except that in the case of a person or organization which only makes charges for admission irregularly and occasionally and not more than four times a year, no tickets or cards need be provided at all, if a correct record be kept in accordance with Article 61, giving all information necessary to enable internal revenue officers to determine the amount of tax due.

[¶ 622] Art. 49. **Printing of tickets—Notice to be given.**—Where tickets or cards of admission to any place for admission to which a charge is made⁴ are printed, manufactured, or sold by any person, it shall be the duty of that person to give prompt notice to the collector of internal revenue of the district in which is located the place to which admission is to be charged. Such notice shall state (1) the name and address of the person to whom the tickets are

¹ For meaning of "admission to any place," see Articles 5-16.

² This includes reservation of table at cabaret. See example 2, Article 27. It also includes reservation of box seat at baseball park. See examples 2, 4, and 5, Article 25.

³ Except in cases exempted under the exemption provisions of the Act. See Articles 32-47.

⁴ For meaning of "amount paid for admission to any place" (which will throw much light on the meaning of "place for admission to which a charge is made"), see Articles 5-16.

furnished and (2) the number of tickets furnished¹ and shall be accompanied by proofs or sample copies of the tickets themselves.² If the tickets are serially numbered, the notice must also contain a statement as to such serial numbers.

[¶ 623] Art. 50. Printing of tickets—Name of place and serial numbers.

—For the proper administration of the provisions of the Act there must appear, on every ticket or card of admission to any place admission to which is subject to tax, the name of such place. Furthermore, every such ticket or card, except permanent tickets or cards for repeated performances or such detached tickets as are valid only on the date printed thereon, must be serially numbered or must be vended from a machine or device recording automatically the sum total of the selling price of all tickets sold. Where such tickets or cards are serially numbered there must be a separate and distinct series for each established price, for each reduced-rate price granted to members of the favored classes mentioned in Article 18, and an additional series for free admissions. The numbers in each series must start with 1 and run continuously in regular order until 500,000 is reached, after which they may start again at 1 if so desired. But whenever the serial numbers start again with 1 a letter of the alphabet must precede or follow the serial number to distinguish that series from the preceding series, and such letters must be used in turn until the alphabet is exhausted before starting again at the letter A. (See Article 53.) Moreover, the proprietor or manager of no place to which admission is charged shall have, or permit to be, at such place at the same time two or more rolls or series of tickets of the same established price or character of admission bearing identical serial numbers which are not so distinguished by different letters of the alphabet.

[¶ 624] Art. 51. Printing or marking of tickets—Established price, sale price, tax paid, and name of seller.—These provisions of the Act and due administration of other provisions require that there must be conspicuously and indelibly printed, stamped, or written on such part of every ticket or card of admission, whether paid or free,³ as is not already covered with printing or writing and as is taken up by the management of the place upon the admission of the person admitted, the following: (1) In case of every such ticket or card, on the face⁴ of such ticket, the established price of the admission for which it is valid, the admission tax to be paid⁵ based on that established price, and the total of such price and tax in the following or an equivalent form:

Established price .....	.....
Tax-paid ⁶ .....	.....
Total ¹⁰ .....	.....

(2) whenever such a ticket or card is sold at a price other than its established price, then in addition, on the back of such ticket, the actual sale price, the admission tax paid,⁵ and the total of such price and tax,⁹ in the following or an equivalent form:

Sale price .....	.....
Tax paid ⁸ .....	.....¹⁰
Total ⁸ .....	.....

¹ If dated, the number for each date.

² Where tickets vary from each other only by a number or letter, or both, indicating the particular seat for which issued, or only by the date, one sample of such tickets will be enough; but where they vary in price, one sample of each price should be furnished.

³ Except a ticket or card of admission to be issued free which does not directly entitle the holder to admission but merely entitles him to secure another ticket or card which does entitle to admission. This exception includes such a ticket or card issued free to evidence a right to the permanent use of a box or seat.

⁴ In the case of strip tickets, the back may be used if desired.

⁵ No ticket can be sold, nor can any ticket directly entitling to a taxable admission be issued free, unless the tax be actually paid. See note 3 above and Articles 53 and 57.

⁶ In cases, where by reason of exemption or otherwise there is no tax, the items "Tax paid" and "Total" can be omitted, but in such cases "Tax free" or an equivalent phrase must appear instead.

^{7, 8, 9, 10} See Footnotes, page 51.

(3) whenever an admission ticket or card is sold at a place other than the ticket office of the theater or other place for admission to which it is valid, then, in addition, on the back of such ticket, the name and address of the seller.

Examples.—(1) A certain theater has a regular charge of \$2 for orchestra seats. It prints the following on the face of that part of the ticket which is taken up by the theater upon the admission of the ticket holder:

Established price	\$2.00
Tax paid .....	.20
	<u>\$2.20</u>

Two hundred of these tickets are sold by the theater to a certain broker. On selling these tickets he stamps with a rubber stamp on the back of the same part of the ticket the following:

This ticket sold by	Sale price	\$2.50
Jones & Co.,	Tax paid .....	.25
27 West St., New York City.	Total	<u>\$2.75</u>

In this case, if this printing and stamping is conspicuously done, it complies with the provisions of Article 51.

(2) George Nelson purchases from Jones & Co one of the tickets mentioned in the preceding example and finding that he is unable to attend the performance he resells this ticket to a friend for the same amount which he paid for it. When selling the ticket George Nelson draws two lines in the form of a cross through the lefthand portion of what the broker had stamped on the back of the ticket and adds his name and address, leaving the inscription on the back of the ticket as follows:

This ticket sold by	Sale price	\$2.50	Sold by Geo. Nelson,
Jones & Co.,	Tax paid .....	.25	10 East 129th St.,
27 West St., New York City	Total	<u>\$2.75</u>	New York City.

The above should be crossed out by Geo. Nelson.

This complies with the provisions of Article 51. Note that George Nelson must pay an excess charge tax on this sale of the ticket to his friend. See Article 30.

(3) A certain theater whose established prices are not the same for all attractions desires to print its tickets for the whole year in advance. To comply with the provisions of Article 51 and yet make it possible to change the established price for various attractions it has tickets printed in the following form:

AMERICAN THEATRE						RIGHT	
The established price tax paid and total are as indicated by punch below							
JULY	SATURDAY EVENING					ORCHESTRA AMERICAN THEATRE GOOD ONLY SATURDAY EVE. JULY 26 1919	
26	ORCHESTRA						
	Established price	.75	\$1.00	\$1.50	\$2.00		\$2.50
	Tax paid	.08	.10	.15	.20		.25
	Total	.83	\$1.10	\$1.65	\$2.20		\$2.75
1919	* * * * *						
PUNCH OUT ONE STAR							

⁷ No ticket can be sold, nor can any ticket directly entitling to a taxable admission be issued free, unless the tax be actually paid. See note 4 on Article 51 above and Articles 53 and 57.

⁸ In cases where by reason of exemption or otherwise there is no tax, the items "Tax paid" and "Total" can be omitted, but in such cases "Tax free" or an equivalent phrase must appear instead.

⁹ If such a ticket or card is sold more than once at a price other than the established price then, if the last sale price and tax are the same as the preceding sale price and tax paid, the preceding endorsement should be left untouched and no additional endorsement of sale price and tax paid should be made (but of course the name of each seller must appear). If, however, the sale price or tax paid is different from the preceding sale price or tax paid, then a simple cross should be made over the preceding sale price and tax paid (which must in no case be erased or otherwise rendered illegible) and the new sale price, tax paid, and total must be endorsed on such ticket or card. See example 2, Article 51.

¹⁰ Although only the balance of admission tax due need to be collected in case of a resale at an advance in price, the amount to be inserted here as "Tax paid" is the whole admission tax, based on the price received on that resale.

Tickets so printed, if properly punched in advance of the opening of any sale or distribution of tickets for the performance for which they are issued (see Article 17, will fully comply with the requirements of Article 51, as well as with those of Articles 48 and 50.

(4) Certain society women form an organization for the sole purpose of giving a single ball the net proceeds from which are to be given to a charity hospital. In this case, if it is decided to use tickets, the tickets must be marked with the "established price" in accordance with the provisions of Article 51. No "tax paid" or "total" need be printed on the tickets, however, because the admissions are clearly exempt from tax,¹ but "tax free" or its equivalent must appear in its stead.

[¶ 625] Art. 52. **Printing or marking of tickets—Reduced-rate or free admissions of favored classes.**—Where any ticket or card of admission, directly or indirectly entitling to admission to any place admission to which is subject to tax, is issued for an amount less than the established price of the admission for which it is valid or is issued free² to a bona fide employee,³ municipal officer on official business,⁴ person in the military or naval forces of the United States when in uniform,⁵ or a child under 12 years of age, there must also be conspicuously and indelibly printed, stamped, or written on the face of such ticket or card,⁶ the fact that such ticket or card is good only for the admission of a member of one of the above favored classes or of any member of one of any selected number of such favored classes (see also Article 20), in one of the following forms or any equivalent form:

(1) "Good only for admission of a U S. soldier in uniform or of a child under 12."

(2) "Good only for admission of a U. S. sailor in uniform."

(3) "Good only for admission of a child under 12."

[¶ 626] Art. 53. **Issuing tickets.**—No ticket or card of admission of any kind,⁷ shall be delivered in pursuance of a sale or an agreement to sell⁸ without collecting⁹ the tax imposed on such admission, nor unless such ticket or card complies with the provisions of Articles 50-51, and of 52, if applicable. No ticket or card of admission which of itself directly entitles the holder to a taxable admission¹⁰ shall be issued free without collecting¹¹ the tax imposed on such admission,¹² nor unless such ticket or card complies with the provisions of Articles 48 and 50-51. In the case of serially numbered tickets, the tickets in each series must be issued consecutively in the order of the serial numbers, and the letters of the alphabet, if any, of that particular series (see Article 50).

[¶ 627] Art. 54. **No taxable admission except by ticket.**—No person (except a person in one of the favored classes mentioned in Article 52, being admitted free) shall be admitted to any place,¹³ admission to which is subject to tax, except on presentation of a ticket or card of admission evidencing sepa-

¹ When admissions exempt, see Articles 33 and 34; divided proceeds, see example 2, Article 35.

² In case of a free admission to a member of one of these favored classes no ticket at all need be issued (see Articles 48 and 54), but if a ticket is issued the above requirements must be complied with.

³ For meaning of "bona fide employees," see Article 21.

⁴ For meaning of "municipal officers on official business," see Article 22.

⁵ For meaning of "persons in the military or naval forces of the United States when in uniform," see Article 22.

⁶ If the ticket or card is one which is to be torn when used and only a portion taken up by the management of the place, then the printing, stamping, or writing required by this article must be on such part of the ticket or card as is taken up by such management. See Article 54.

⁷ Even if it be a ticket or card which does not directly entitle the holder to admission but which merely entitles him to secure another ticket or card which does.

⁸ Or delivered to evidence a purchased right to the permanent use of a box or seat or the use of such box or seat under a lease.

⁹ See Article 57.

¹⁰ Which includes, of course, admission to a box or seat of which a person has the permanent use.

¹¹ See Article 57.

¹² See Articles 24 and 25.

¹³ For meaning of "admission to any place," see Articles 5-15.

rately or separably that particular right to admission (see Article 48), and complying with the provisions of Articles 50-51, and of 52, if applicable, unless the occasion is such that Article 48, does not require the use of tickets or cards of admission at all. In every case the ticket or card so presented or a portion thereof must be taken up, at the time of admission, by the management of the place.¹ Under ordinary circumstances the tickets or cards or portions thereof so taken up need not be preserved by the management of the place, but from time to time, on short notice from a collector of internal revenue or a revenue agent, the management must carefully preserve, until inspection by such officer, all tickets or cards or portions thereof taken up on the occasion designated in such notice.

[¶ 628] Art. 55. **Roof-garden or cabaret bills and receipts.**—The proprietor of every roof garden, cabaret, or place of similar entertainment, the price of admission to a public performance for profit at which is wholly or in part included in the price paid for refreshment, service, or merchandise, must furnish each guest upon paying his bill for refreshment, service, or merchandise with a coupon receipt to be detached from such bill. All such bills shall be serially numbered and the coupon receipt in each case shall be numbered the same as its bill. The bill and coupon receipt shall each bear in indelible figures the total amount of the charge for refreshment, etc., the tax thereon, which on the receipt shall be stated as “paid,” and the sum total of such charge and tax. No such receipt shall be delivered except on collecting the amount of the tax so shown on such receipt as “paid.” See Article 57, and note 2 under Article 57.

[¶ 629] Art. 56. **Signs to be posted.**—In the case of every place, admission to which is subject to tax, the proprietor or manager must keep conspicuously posted at the outer entrance and near the box office one or more signs accurately stating each of the established prices of admission, and in the case of each such price the tax due and the sum total of the established price and the tax.

Examples.—The following are examples of such signs:

(1) In the case of a “legitimate” theater:

	Admission.	Tax.	Total.
Box seats	\$2.00	20c	\$2.20
1st 10 rows of orchestra.....	1.50	15	1.65
Balance of orchestra.....	1.00	10	1.10
1st 4 rows of balcony.....	.75	8	.83
Balance of balcony.....	.50	5	.55
Gallery .....	.25	3	.28

(2) In the case of a moving-picture theater:

Orchestra.		Balcony.	
Admission	27c.	Admission	13c.
Tax	3	Tax	2
Total.....	30c.	Total.....	15c.

COLLECTION, RETURN, AND PAYMENT OF TAX.

[¶ 630] Sec. 802. That every person (a) receiving any payments for such admission, dues, or fees shall collect the amount of the tax imposed by section 800 or 801 from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made, shall collect the amount of the tax imposed by section 800 from the person so admitted. Every club or organization

¹ Therefore, no one (except a member of one of the favored classes mentioned in Article 52 being admitted free) can be admitted to any place admission to which is subject to tax, on an occasion when tickets are required by Article 48, by merely showing a pass. To secure admission he must give up some ticket or part of a ticket. In other words, a ticket or pass good for more than one occasion must consist of separate tickets, or separable tickets, one to be detached for each admission, or must entitle the holder in some way (by showing the pass at the box-office or otherwise) to secure a ticket, good for that occasion, of which the whole or a part is to be given up at the door on being admitted. See Article 48.

having life members, shall collect from such members the amount of the tax imposed by section 801. In all the above cases returns and payments of the amount so collected shall be made at the same time and in the same manner as provided in section 502.

[¶ 631] **Sec. 502.** That each person receiving any payments referred to in section 500 shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under subdivision (c) or (d) of section 501 to the collector of the district in which the principal office or place of business is located.

[¶ 632] **Sec. 800. (a) (3)** Upon tickets or cards of admission to theaters, operas, and other places of amusement, sold at newsstands, hotels, and places other than the ticket offices, etc. * * * such taxes to be returned and paid in the manner provided in section 903 by the person selling such tickets;

(4) A tax equivalent to 50 per centum of the amount for which the proprietors, managers, or employees of any opera house, theater or other place of amusement sell or dispose of tickets or cards of admission in excess of the regular or established price or charge therefor, such tax to be returned and paid in the manner provided in section 903 by the person selling such tickets.

[¶ 633] **Sec. 903.** That every person liable for, (etc.) * * * shall make monthly returns under oath in duplicate and pay the taxes imposed by such sections to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 634] **Art. 57. Duty to collect, return, and pay tax—Taxes on Admissions.**—Every individual, corporation, partnership, or association (1) receiving any taxable¹ payment² for admission must collect the tax from the person making such payment at the time³ such payment is made⁴; (2) delivering free to any person a ticket or card directly entitling the holder to admission to any place when such admission is taxable⁵ must collect the tax from the person so receiving such ticket or card at the time of such delivery⁶; (3) admitting any person free to any place in any case where no ticket or card of admission is used (see Article 48), when such admission is taxable⁵ must collect the tax from the person so admitted at the time of such admission; (4) being the proprietor or manager of an opera house or any other place of amusement

¹ Under Section 800 (a) (1) or (2) of the Act. See Articles 4, 18, and 23.

² Of course, if this payment is for several admissions, whether for one occasion or for several occasions represented by a season ticket, subscription, or otherwise, the tax must be collected on each of the admissions represented by the payment. In such case the tax on each admission must be computed separately. See Articles 4, 18, and 23. But see paragraph 590.

³ In the rare cases where the payment for an admission which is not free is not made in cash before or at the time of receiving a ticket or card of admission, or of admission itself in cases where no tickets or cards are used (see Article 48), payment must be treated as made at the time of receiving such ticket or card, or of such admission, and the tax must be then collected. This is true even though the ticket or card so received does not directly entitle the holder to admission but merely entitles him to secure another ticket or card which does entitle to admission. This includes cases where payment is not to be made in money at all (see Article 16), and also cases where credit is to be given. Credit can be given for the price of admission, if desired, but not for the tax. The tax must be collected not later than the time of the delivery of a ticket or card of admission, or of the admission if no tickets or cards are used. See Article 53.

⁴ A ticket broker or other person reselling a ticket at an advance over the former sale price must collect and duly return and pay over (see Article 63) any balance of admission tax due. See Articles 4 (particularly example 4), 18, 23 (particularly example 12), 24 (particularly example 10), and 30 (particularly examples 1-3). He may also collect, and retain as a refund to him, the amount of admission tax already paid on that admission by him. A theater issuing a ticket in exchange for a less expensive ticket and a cash balance must collect the admission tax due on the cash balance.

⁵ Under Section 800 (a) (2). See Article 24.

⁶ It is obvious that, even though the tax in this case is imposed on the admission (see Article 24), it is absolutely necessary as a practical matter to provide that it be collected (in cases where tickets are used) not later than the time of the delivery of a ticket directly entitling to this admission. In other words, it is absolutely necessary, as far as the collection of the tax is concerned, to treat "admission" as meaning its substantial equivalent "right to admission." But where admission itself fails to occur, there is a right to a refund. See Article 67.

in a case where any person has the permanent use or a lease for the use of a box or seat therein which is subject to tax¹ must collect the tax from the owner or lessee of such box or seat²; or (5) receiving any payment for refreshment, service, or merchandise, which is taxable³ because including therein a charge for admission to a public performance for profit, at any roof garden, cabaret, or other similar entertainment, must collect the tax from the person making such payment at the time of such payment,⁴ (see also Articles 53 and 64). In each case there rests on the respective person from whom the tax is to be collected the corresponding duty of then paying such tax. A monthly return and payment of all such collections⁵ must be made in accordance with the provisions of Article 63. For penalties see Article 68.

Example: A policeman's benefit association has a baseball game, the proceeds to be turned into the treasury of the association. It prints tickets to be sold at \$1 each which are not good for admission, but which can be exchanged for \$1 tickets at the ticket office of the ball park. These tickets so printed by the association must comply with the provisions of Articles 50-51, and an admission tax of 10 cents must be collected upon the sale of each of them.

[¶ 635] Art. 58. **Duty to return and pay tax—Taxes on charges in excess of established price.**—Every individual, corporation, partnership, or association, selling or disposing of a ticket or card of admission at a price in excess of the established price of the admission for which such ticket or card is valid⁶ in a case where such excess is taxable⁷ shall make a monthly return and pay the tax due, in accordance with the provisions of Article 63. For penalties see Article 68.

[¶ 636] Art. 59. **Application for and certificate of registry.**—Every individual, corporation, partnership, or association (1) required by the provisions of the Act to collect any tax on admissions⁸ (see Article 57) or (2) being the owner or lessee of any place which is ordinarily or at times leased to other persons who impose charges for admissions to it (see Article 64) or (3) required to pay any tax on charges in excess of established price (see Article 58) shall annually, on or before the first day of July, make an application for registry, by filling out Form 752 (Revised)⁹ with all information there called for, and duly executing it under oath. In cases falling within the first of the above classes (except such as are considered in Article 60) such an application must

¹ Under Section 800 (a) (5). See Article 25.

² If the permanent use or lease for the use of the box or seat in question is paid for, then the time for the collection of the tax is the same as that in the case of any other paid admission. See subdivision 1 of Article 57 and also note 1. If the right to use is granted free or is otherwise enjoyed without being directly paid for, then the time for the collection of the tax is the same as that for free admissions under subdivision 2 of Article 57. Note that Article 48 requires a separate or separable ticket or card of admission to evidence every right to the use of a box or seat which is owned or leased. That requirement and the provisions of Article 57 and of this note seem to provide for the collection of the full tax due on such right to the use of a box or seat. But if they prove insufficient, by reason of attempts at evasion or otherwise, to provide for the collection of the full tax due in any such case, then the proprietor or manager of the opera house or other place of amusement in which such box or seat is located shall collect on the first day of each month, from the person entitled to the use of such box or seat any balance of tax due from such person for the right to the use of such box or seat during the preceding month.

³ Under Section 800 (a) (6). See Article 27.

⁴ In the rare cases where payment for refreshment, service, or merchandise is not made before or at the time of leaving the roof garden, cabaret, or other place of entertainment, payment must be treated as having been made and the tax must be then collected. Credit can be given for the amount paid for refreshment, service, or merchandise, if desired, but not for the tax. The tax must be collected not later than the departure of the person from the place of the performance at the conclusion of such performance. See Article 55.

⁵ The collector of internal revenue to whom return and payment is to be made (see Article 63) may in his discretion require any person receiving payments for taxes to make daily deposit of the sums so received in a special account in such bank as the collector may designate.

⁶ In case such ticket or card is valid for admissions of more than one established price then the highest of such established prices is the one meant here.

⁷ Under Section 800 (a) (3) or (4) of the Act. See Articles 29-31.

⁸ A person who charges admissions to a theater, hall, park, ball-room, or other place, the control of which he secures by lease for one or more particular occasions only, is not required, however, to apply for or secure a certificate of registry under the provisions of this article. See Article 64.

⁹ To be obtained from any collector of internal revenue.

be filed in the office of the collector of internal revenue of each district in which is located a place to which admissions are charged on account of which a tax is imposed on the person making such application. In cases falling within class 2 the application must be filed in the office of the collector of internal revenue of each district in which such a place is owned or leased. In cases falling within class 3 the application must be filed in the office of the collector of internal revenue of the district in which is located the principal place of business of the person making the application, or in which is located his residence, if he have no fixed place of business. The collector, if satisfied that all the statements made in the application for registry are correct, will issue a certificate of registry on Form 753 (Revised) to the person who made such application. This certificate must be kept conspicuously posted in the principal place of business of such person, or be carried about with him, if he has no fixed place of business.

Example: A certain hotel has a number of rooms which it rents from time to time for dances and other parties. This hotel falls within class 2 of Article 59 and must annually make application for registry.

[¶ 637] Art. 60. **Traveling shows.**—The proprietor or manager of every show, circus, exhibition, Chautauqua,¹ or other amusement enterprise, which is traveling or itinerant² shall file the application for registry required by Article 59 with the collector of internal revenue of the district in which the headquarters of such show is located, if it have an established headquarters. If it has no established headquarters, then the application shall be filed with the collector of the district in which such proprietor or manager resides. The certificate of registry, the daily record required by Article 61, and a copy of each monthly return (see Article 63) must be carried along with the show and exhibited on request to collectors of other districts or to internal revenue agents.

Examples: (1) A certain Chautauqua has its main office in a certain city. The lectures, entertainments and other attractions which it furnishes constantly tour the country, moving from State to State. In this case the application for registry must be made with the collector of internal revenue of the district in which its main office is located.

(2) A certain theatrical company, acting in a farce comedy, tours the country, playing in various theaters. All of these theaters have certificates of registry, and they take care of all matters connected with the sale of tickets, collection of tax, etc. Such a company does not fall within the provisions of Articles 59 or 60 and is not required to apply for a certificate of registry at all.

[¶ 638] Art. 61. **Records—Taxes on Admissions.**—Every individual, corporation, partnership, or association³ required by the provisions of the Act to collect any tax on admissions⁴ must keep or cause to be kept an accurate daily record showing (1) in the case of each class of Taxes on Admissions⁵ (a) all figures and other information⁶ necessary to determine the amount of tax due for that day, and (b) the amount of tax due for that day, and (2) the total amount due as Taxes on Admissions⁵ for that day. The proprietor or manager

¹ As to whether Chautauqua is exempt, see example 1 under Article 35.

² This list is only meant to include shows, etc., which control the sale of tickets to their performances and the collection of tax on the same. It does not include, therefore, traveling theatrical attractions, lyceum entertainers, or the like, who perform in theatres or other places where the local management controls the sale of tickets and the collection of the tax.

³ Ticket brokers, of course, and any other persons who by selling tickets at an advanced price have the duty of collecting a balance of admission tax (due because of the increased amount paid for admission), are subject to the requirements of this article.

⁴ See Article 57.

⁵ For Taxes on Admissions, see Articles 4-28.

⁶ The daily record must, among other things, give full and accurate information with regard to all passes and exchange tickets. Where serially numbered tickets are used, it must also show, in the case of each series, the number of the first ticket and of the last ticket issued during the day.

of the business must certify, over his signature, to the correctness of the daily record, and if any other person is directly interested in the proceeds of the amounts received for admission, he or his agent must also so certify to it. Whenever in the course of the business a report is prepared daily or at some other regular interval or at any time by a treasurer or manager for the benefit of the proprietor, or by the proprietor, treasurer, or manager for the benefit of some other interested party, a sworn copy of such report must be attached to and made a part of such daily record. Indeed, if such a report contains all the information required above, no daily record other than the sworn copy of the report need be kept. But whatever information such a report may contain, a sworn copy of it must be made and kept. Such daily records, including such sworn copies of reports, must be kept on file at the box office of the place or at some other convenient location¹ for a period of two years, in such manner as to be readily accessible on request to internal revenue officers.

[¶ 639] Art. 62. Records—Taxes on Charges in Excess of Established Price.—Every individual, corporation, partnership or association required by the provisions of the Act to pay any tax on charges in excess of established price,² must keep or cause to be kept a daily record which classifies all sales of tickets into classes in each of which all the tickets are identical in respect to (1) the place to which admission is granted by the ticket, (2) the established price (exclusive of admission tax) of the admission granted by the ticket and (3) the actual price (exclusive of any amount representing an admission tax) at which that sale of the ticket is made. This daily record must show (1) in the case of each such class (a) full figures and other information necessary to determine the amount of tax due for that day, and (b) the amount of tax due for that day, and (2) the total amount due as Taxes on Charges in Excess of Established Price² for that day. Whenever in the course of the business a report is prepared daily or at some other regular interval or at any time by a treasurer or manager for the benefit of the proprietor, or by the proprietor, treasurer, or manager for the benefit of some other interested party, a sworn copy of such report must be attached to and made a part of such daily record. Indeed, if such a report contains all the information required above, no daily record other than the sworn copy of the report need be kept. But whatever information such a report may contain, a sworn copy of it must be made and kept. Such daily records, including such sworn copies of reports, must be kept on file at the place of business, or at some other convenient location, for a period of two years, in such a manner as to be readily accessible on request to internal revenue officers.

[¶ 640] Art. 63. Returns and payments.—Every individual, corporation, partnership, or association required by the provisions of the Act to collect any tax on admissions (see Article 57) or to pay any tax on charges in excess of established price (see Article 58) shall make up each month from the daily record, required by Article 61 or 62, as the case may be, a return in duplicate on Form 729 (Revised), in accordance with the instructions printed on the back of that form. This return must be made under oath, unless the total amount of the tax returned (regardless of a possible credit sought for a former overpayment) is \$10 or less, in which case it may be signed or acknowledged before two witnesses instead of being under oath. This return together with the amount of the tax must be transmitted, on or before the last day of the month following that for which it is made, to the office of the collector of internal revenue who issued the certificate of registry for the place or business

¹ The daily record of a traveling show (see Article 60) must be carried along with the show.

² For Taxes on Charges in Excess of Established Price, see Articles 29-31.

for which such return and payment is being made.¹ (For penalties see Article 68.) A copy of Form 729 (Revised) will, as far as possible, be mailed each month to every person that filed a return during the preceding month, but a failure to receive such copy will not excuse a failure to return and pay tax.

[¶ 641] Art. 64. **Leases of places.**—Whenever a person, society, or organization leases² a theater, hall, park, ball-room, or other place for any occasion, there is imposed on the lessee, by the provisions of the Act, the duty of collecting any taxes due on admissions to such place on that occasion. However, for the convenience of the parties and the safeguarding of the revenue, the lessor will be permitted, if properly registered in accordance with Article 59, to assume the responsibility for the collection of the tax in such cases. If the lessor assumes such responsibility his tickets shall be used³ and the daily record required by Article 61 shall be kept as a part of the daily records of the lessor in the same manner and form as if there had been no lease of the place on that occasion; with the exception, however, that the name of the lessee must also appear on the daily record and that he must also certify to the correctness of such record. If the lessor, however, does not assume responsibility for the collection of the tax, the lessee, precisely like any other person collecting taxable admissions, must comply in all respects with these regulations, more particularly with Articles 57, 58, 61, 62 and 63.⁴ Moreover, in such case the lessor, before or at the time of making the lease, must notify the collector of internal revenue, of the district in which the place is located, on Form 754 (Revised)⁵ that such lease is being made. The lessor of any such place, whenever he makes a lease, shall furnish the lessee with a copy of Form 755 (Revised),⁵ in order that the lessee may promptly claim any exemption to which he may be entitled. (See Article 47.)

CREDITS AND REFUNDS.

[¶ 642] Sec. 1301. (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

[¶ 643] Art. 65. **Credit for overpayment.**—Any individual, corporation, partnership, or association that has paid to the collector of internal revenue, as a tax under section 800 of the Act, any amount erroneously or illegally assessed or collected or any amount in excess of the amount of the tax actually imposed by that section for the month covered by that payment, may claim credit for such overpayment against the amount of the tax imposed by that section which is due upon any other monthly return thereafter made in the same behalf on Form 729 (Revised). Such credit will only be granted, however, if, in making claim, instructions printed on back of form are carefully followed.

[¶ 644] Art. 66. **Refund of overpayment.**—Any individual, corporation, partnership, or association that has paid to the collector of internal revenue, as a tax under section 800 of the Act, any amount erroneously or illegally assessed, or any amount in excess of the amount of the tax actually imposed by that section for the month covered by that payment, or any amount as a

¹ "To the collector of the district in which the principal office or place of business is located." in Section 502 of the Act, means (1) if there is a definitely located place to which admission is charged, to the collector of the district in which such place of business is located; or (2) if the business is not definitely located but traveling or itinerant, to the collector of the district in which is located the principal office of such business or, if it has no office, the residence of its proprietor. See Articles 59-60.

² Where a person, society, or organization acquires the right to dispose of all the admission to any place for one or more occasions, the transaction amounts to a lease of such place within the meaning of this article. See also Article 12.

³ If the lessee issues general admission tickets these tickets must not entitle to admission, but be merely exchangeable for tickets of the lessor entitling to admission. Both kinds of tickets must comply with Articles 50-51, except that such general admission tickets if issued free are not subject to Article 51.

⁴ Such lessee, however, does not have to make application for or secure a certificate of registry in accordance with Article 59.

⁵ To be obtained from any collector of internal revenue.

penalty for the collection of which there was no authority, may secure a refund of the amount so overpaid by filing with the collector to whom such payment was made a properly prepared claim on Form 46 (Revised).

[¶ 645] Art. 67. **Refund of overcollection.**—Every individual, corporation, partnership, or association that has collected from any person, as a tax under section 800 of the Act, any amount erroneously or illegally assessed, or any amount in excess of the amount of the tax imposed by that section actually due from such person, shall upon proper application promptly refund such amount to the person entitled thereto, even though such amount has already been paid over to the collector of internal revenue and no corresponding credit (see Article 65) or refund (see Article 66) has yet been secured. As the tax on paid admissions under Articles 4, 18 and 23 is based on the payment, not the admission, no refund of any part of such tax is authorized merely because the person paying for admission does not actually make use of his right to admission. Where, however, an amount paid for admission is refunded it will be treated, as far as the liability to the tax is concerned, as not having been paid, and the amount of any tax collected at the time of the payment should itself be refunded to the taxpayer by the person refunding the payment, at the same time the payment is refunded.¹ The tax on free admissions must be paid on the free receipt, by a person not in one of the favored classes mentioned in Article 18, of a ticket or card directly entitling to admission.² But as the tax is based on the admission in case no admission actually occurs the tax liability is defeated. And, therefore, any admission tax paid on the receipt of such a ticket or card should be refunded on the return unused of such ticket or card. As the tax on the permanent use or a lease for the use of a box or seat is based on the right to use (see Article 25), it is entirely immaterial whether the box or seat is ever used or not, and, therefore, no refund can ever be granted on the ground that there was no actual use of the box or seat.

PENALTIES.

[¶ 646] Sec. 502. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 647] Sec. 800 (d). Whoever sells an admission ticket or card on which the name of the vendor and price is not so printed, stamped or written, or at a price in excess of the price as printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.

[¶ 648] Sec. 903. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 649] Sec. 1308. (a) That any person required under Titles V, VI, VII, VIII, IX, X, or XII, to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

¹ See example 1 under Article 4, and the last third of Article 17.

² See Article 57 and not 4 thereunder, and Articles 24 and 53.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the revised Statutes, as amended, or of section 605 or 620 of this Act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 650] Analysis of penalty provisions of Revenue Act of 1918.

Act or default penalized.	Penalty applicable.	Section of Revised Act of 1918.
Sale of "admission tickets or card on" the "face or back" of "which the name of the vendor" ("if sold other than at the ticket office of the theater, opera, or other place of amusement") and the "price (exclusive of the tax to be paid by the person paying for admission) at which" the "ticket or card is sold" is not "conspicuously and indelibly printed, stamped, or written"; or sale of an admission ticket or card "at a price in excess of the price so printed, stamped, or written thereon."	Fine of not more than \$100.....	800 (d).
"Failure to make and file" return "within the time prescribed" (when return not filed later and reasonable cause shown for failure to file in time).	25 per cent addition to tax (to be collected as part of tax, or if tax already collected, then in same manner as tax.)	Section 3176 U. S. Revised Statutes, as amended by section 1317.
Willfully making "false or fraudulent return."	50 per cent addition to tax (to be collected as above).	Do.
Failure to pay tax when due.....	5 per cent addition to tax..... and 1 per cent interest for each full month from time tax due.	502 and 903.
Failure by any "person" to "pay, collect, or truly account for and pay over any such tax, make any such return, or supply any such information at the time or times required by law or regulation."	Penalty of not more than \$1,000...	1308 (a).
Willful refusal by any "person" to "pay, collect, or truly account for and pay over any such tax, make such return, or supply such information at the time or times required by law or regulation," or willful attempt "in any manner to evade such tax."	Fine of not more than \$10,000..... or Imprisonment for not more than one year, or both.	1308 (b).
Willful refusal by any "person" to "pay, collect, or truly account for and pay over any such tax."	100 per cent addition to tax ²	1308 (c).

¹ "Persons" includes "an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs." (Section 1308 (d).)

² "No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended," the substance of which is stated above. (Section 1308 (c).)

[¶ 651] Art. 68. **Penalties.**—The scope of the penalties applicable to the Tax on Admissions is so broad that reference will be made only to their most common applications. Every individual, corporation, partnership, or association, on which there rests a duty to file a monthly return on Form 729 (Revised), that fails to file such return, and to pay over the tax due thereon, during the month which follows that for which such return should be made, is subject to certain automatic penalties. A mere failure to file the return within that following month causes to automatically accrue the 25 per cent penalty imposed by section 3176 of the Revised Statutes, as amended. If the failure be willful the penalty is 50 per cent instead of 25 per cent. A mere failure to pay to the collector during the month which follows that for which such return should be made, all taxes due under that return, causes to automatically accrue, under section 502 of the Revenue Act of 1918, a penalty of 5 per cent, and of interest at 1 per cent per month for each full month of delay. Every person who fails to pay at the proper time the amount of the taxes due is also subject, under section 1308 of the Revenue Act of 1918, to a penalty of not more than \$1,000. If this failure amounts to a wilful refusal to pay, or an attempt to evade the tax, he is guilty of a misdemeanor and subject to a fine of not more than \$10,000, or imprisonment for not more than one year, or both, and he is, moreover, liable to a penalty of 100 per cent of the amount of the tax. These penalties apply as well to an officer or employee of a place, or attraction, or ticket-selling business, who fails to perform a duty with regard to the Tax on Admission, as to a person who fails or refuses to pay his tax.

Example: A certain theater which sells about \$1,000 worth of taxable admission tickets each month, regularly collects the taxes due on such admission, but the treasurer carelessly fails to file a return and pay over the taxes for April, May, and June, 1919, until September 2, 1919. The taxes collected in April are \$110, in May \$100, and in June \$120. In this case the automatically imposed penalties are as follows:

Taxes collected.....	\$110.00	
25 per cent penalty.....		\$27.50
5 per cent penalty.....		5.00
3 months' interest at 1 per cent.....		3.30
		<hr/>
		\$36.30
May:		
Taxes collected.....	\$100.00	
25 per cent penalty.....		25.00
5 per cent penalty.....		5.00
2 months' interest at 1 per cent.....		2.00
		<hr/>
		32.00
June:		
Taxes collected.....	\$120.00	
25 per cent penalty.....		30.00
5 per cent penalty.....		6.00
1 month's interest at 1 per cent.....		1.20
		<hr/>
		37.20
		<hr/>
Total penalties.....		\$105.50

In addition the theater treasurer is liable to a penalty of not more than \$1,000.

AUTHORITY FOR REGULATIONS.

(Sec. 1309 of Act)

[¶ 652] Art. 69. **Promulgation of regulations.**—In pursuance of this provision of the Act the foregoing regulations are hereby made and promulgated and all rulings inconsistent with them are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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TAX
ON
DUES

SECTION 801 OF TITLE VIII OF
REVENUE ACT OF 1918

Law,
Regulations No. 43,
Revised (Part II)

Indexed

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IMPOSED BY

[¶ 653] Sec. 801. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 701 of the Revenue Act of 1917, a tax equivalent to 10 per centum of any amount paid on or after such date, for any period after such date, (a) as dues or membership fees (where the dues or fees of an active resident annual member are in excess of \$10 per year) to any social, athletic, or sporting club or organization; or (b) as initiation fees to such a club or organization, if such fees amount to more than \$10, or if the dues or membership fees (not including initiation fees) of an active resident annual member are in excess of \$10 per year; such taxes to be paid by the person paying such dues or fees: Provided, That there shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system. In the case of life memberships a life member shall pay annually, at the time for the payment of dues by active or resident annual members, a tax equivalent to the tax upon the amount paid by such a member, but shall pay no tax upon the amount paid for life membership.

"Club or organization."

RETURNS.

(See article 16 below.)

"Monthly returns under oath" (but regulations may allow two witnesses to be used instead of oath for returns of \$10 or less), "in duplicate," to "be made at such times and in such manner" as provided in regulations.

PAYMENTS.

(See article 16 below.)

"The tax shall, without assessment" or notice, "be due and payable," at the time fixed "for filing the returns," to the collector of internal revenue "of the district in which the principal office or place of business is located."

CREDITS AND REFUNDS.

(Sections 1310 (a) and 1316 (a).)

CREDIT TO CLUB FOR OVERPAYMENT.

(See article 17 below.)

"Person making" overpayment "may take credit therefor against taxes due upon any monthly return."

REFUND OF OVERPAYMENT.

(See article 18 below.)

The Commissioner, subject to regulations, may refund taxes erroneously, illegally, or unjustly collected, or excessive in amount, and "all penalties collected without authority."

REFUND BY CLUB OF OVERCOLLECTION.

(See article 19 below.)

"Person making" overcollection "shall make refund" of excess "upon proper application by the person entitled thereto."

PENALTIES.

(See article 20 below.)

Act or default penalized.	Penalty applicable.	Section of Revenue Act of 1918.
"Failure to make and file" return "within the time prescribed" (when return not filed later and reasonable cause shown for failure to file in time).	25 per cent addition to tax (to be collected as part of tax, or if tax already collected then in same manner as tax).	Section 3176, U. S. Revised Statutes, as amended by section 1317.
Willfully making "false or fraudulent return."	50 per cent addition to tax (to be collected as above).	
Failure to pay tax when due.....	5 per cent addition to tax.... and 1 per cent interest for each full month from time tax due.	502.
Failure by any "person"* to "pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation."	Penalty of not more than \$1,000.	1308 (a).
Willful refusal by any "person"* to "pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation," or willful attempt "in any manner to evade such tax."	Fine of not more than \$10,000, or Imprisonment for not more than one year, or both.	1308 (b).
Willful refusal by any "person"* to "pay, collect, or truly account for and pay over any such tax."	100 per cent addition to tax. . †	1308 (c).

* "Person" includes "an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs." (Section 1308 (d).)

† "No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended," the substance of which is stated above. (Section 1308 (c).)

AUTHORITY FOR REGULATIONS.

(Section 1309.)

"The Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act."

Clubs Included.

[¶ 655] **Art. 2. Provisions of Revenue Acts of 1917 and 1918.**—In stating the classes of clubs to which the Tax on Dues applies, the Revenue Act of 1918 uses precisely the same words, "social, athletic, or sporting," as the Revenue Act of 1917. So all the provisions of articles 3, 4, 5, and 7, below, apply with equal force to taxes under either Act. The exemption provision of the 1918 Act, however, differs from that of the 1917 Act. (See Article 6, below.)

[¶ 656] **Art. 3. Determination of character of club.**—The purposes and activities of a club and not its name determine its character for the purpose of the Tax on Dues. Every club or organization having social, athletic, or sporting features is presumed to be included within the meaning of the phrase, "any social, athletic, or sporting club or organization," until the contrary has been proved, and the burden of proof is upon it. Every such club or organization, therefore, unless it falls within the express exemption of the Act (see Article 6, below), must collect, return, and pay over the tax imposed by the Act, unless and until it has satisfied the Commissioner of Internal Revenue that it is not in fact "social, athletic, or sporting" within the meaning of the Act as defined in these regulations. (See Articles 4 and 5, below.) If any such club or organization desires to claim that it is not in fact "social, athletic, or sporting" it shall submit to the collector its charter or constitution and by-laws, together with a statement as to its actual purposes, activities, practices, and facilities, the character of its expenditures, and such other evidence as may be requested. Upon consideration of the evidence submitted the collector will determine whether or not such club or organization is included within this provision of the Act. If, however, the collector is in doubt as to whether or not the club or organization is "social, athletic, or sporting," he will refer the statement and accompanying papers to the Commissioner for decision. When a club or organization has been held not to be a "social, athletic, or sporting" club or organization, it need not thereafter make a return of tax on dues or fees, or any further showing with respect to its status under the law, unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all clubs or organizations held not to be "social, athletic, or sporting" clubs or organizations, to the end that they may occasionally inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated. If the collector decides that the club or organization is not satisfied with his decision it may request that the matter be referred to the Commissioner of Internal Revenue at Washington for a ruling and this will be done. If the collector or the Commissioner decides that the club or organization is not included within the provisions of the Act, then on the filing with the collector to whom the tax has been paid of a properly prepared claim (see Art. 18 below) on Form 46 (Revised) the amount of tax already paid to the collector will be refunded to the club or organization for repayment by it to the original taxpayers.

[¶ 657] **Art. 4. Social clubs.**—Any organization which maintains quarters or arranges periodical dinners or meetings, for the purpose of affording its members an opportunity of congregating for social intercourse, is a "social * * * club or organization" within the meaning of the Act, unless its social features are not a material purpose of the organization but are subordinate

and merely incidental to the active furtherance of a different and predominant purpose, such as, for example, religion, the arts, or business. The tax does not attach to dues or fees of a religious organization, singing society, chamber of commerce, commercial club, trade organization, or the like, merely because it has incidental social features; but, if the social features are a material purpose of the organization, then it is a "social * * * club or organization" within the meaning of the Act. An organization that has for its exclusive or predominant purpose religion or philanthropic social service (or the advancement of the business or commercial interests of a city or community) is so clearly not a "social * * * club or organization" that its possession and use of a building furnished with social-club facilities does not render taxable dues or fees paid to it. Most fraternal organizations are in effect social clubs, but if they are operating under the lodge system, payments to them are expressly exempt. (See Article 6 below.)

Examples.—(1) Neither a Young Men's Christian Association nor a Young Men's Hebrew Association is a social club within the meaning of the Act, for the predominant purpose of each is religion and philanthropic social service.

(2) A social settlement which provides, among other things, dances and other social opportunities for a slum neighborhood is supported by contributions. Any person contributing \$15 a year is called a "member" of the settlement association. Such contributions are not taxable, for such a settlement is not a social club within the meaning of the Act, as its predominant purpose is philanthropic social service.

(3) An automobile dealers' association is organized and operated for the purpose of maintaining a social organization of persons residing in a certain city and engaged in the manufacture or sale, or both, of automobiles and their accessories, and for the further purpose of affording its members opportunity and inducement to enjoy healthful indoor games, and to acquire skill and efficiency therein, and promote social welfare and social intercourse between the members, thereby promoting their mental and bodily health, and further by debates and discussions between themselves at their meetings, promote interest in automobile transportation, traffic, and knowledge of the industry in the city, and also to enable its members to co-operate in holding an annual automobile show and in securing judicious and needed legislation for the protection and advancement of the automobile industry in the city. This organization is a social club within the meaning of section 801 of the Revenue Act of 1918.

[¶ 658] **Art. 5. Athletic or sporting clubs.**—Tennis, golf, boxing, boating, canoe, fishing and hunting clubs, and any organization (of which the members are individuals) for the practice or promotion of athletics or sports, are included within the meaning of the words of the Act, "athletic or sporting club or organization." A local, sectional, or national "athletic or sporting" association, the membership of which is composed wholly or partly of member clubs, is not within the scope of the Act. The possession and use of a gymnasium, swimming pool, or other athletic facilities by an organization having religion or philanthropic social service for its exclusive or predominant purpose does not render taxable dues paid to it, as being an "athletic or sporting club or organization."

Examples.—(1) An intercollegiate athletic association, whose membership is composed not of individuals but of the track teams of a group of colleges, is not within the scope of the Act, and dues and fees paid to it by the member teams are not taxable.

(2) Dues and fees paid for membership in a Young Men's Christian Association or Young Men's Hebrew Association are not taxable, although they entitle the member to the use of a gymnasium, swimming pool, or other athletic facilities.

[¶ 659] Art. 6. **Exempt organizations.**—The Revenue Act of 1918 expressly exempts from tax “all amounts paid as dues or fees to a fraternal society, order or association, operating under the lodge system.” “Operating under the lodge system” means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called “lodges,” “chapters,” or the like.

Examples.—(1) An organization, formed for purely social purposes by Masons of the higher degrees, consisting of local “lodges” and a “grand lodge,” falls within the exemption of the 1918 Act (but not that of the 1917 Act).

(2) Dues and fees paid to a “chapter” of a college fraternity are exempt from tax under this exemption of the 1918 Act (but are not so exempt under the 1917 Act).

(3) Dues and fees paid to a “local” of a labor union are free from tax under the 1918 Act (and also under the 1917 Act).

(4) A national labor organization, comprising no local bodies but organized as a single and nation-wide unit, to which each member belongs directly, does not fall within the exemption of the 1918 Act (nor within that of the 1917 Act).

(5) Dues and fees paid by members of a local organization among the students of a college which is similar to chapters of the larger college fraternities are not exempt from tax.

[¶ 660] Art. 7. **Foreign clubs.**—Dues or fees paid to a club located outside of the United States and having no branch or organization in the United States are not taxable.

PAYMENTS WITHIN TIME SCOPE OF REVENUE ACTS OF 1917 AND 1918.

Analysis of Pertinent Provisions of Revenue Act of 1918.

(Section 801.)

“Any amount” { “paid on or after” April 1, 1919,
which is
paid “for any period after” April 1, 1919.

[¶ 661] Art. 8. **Dues or membership fees.**

Whether any tax is due, and, if so, what tax is due, on a payment made—

Is determined by—

I. Before April 1, 1919.	a. For a period entirely before Nov. 1, 1917.	Neither Act—not taxable.
	b. For a period partly before Nov. 1, 1917, and partly after Oct. 31, '17, whether partly after Apr. 1, 1919, or not.	Revenue Act of 1917. (As concerns so much of the payment as applies to the period after Oct. 31, 1917. The remainder is, in no case, taxable.)
	c. For a period entirely after Oct. 31, 1917, whether partly or entirely after Apr. 1, 1919, or not.	Revenue Act of 1917.
II. On or after April 1, 1919.	a. For a period entirely before Nov. 1, 1917.	Neither Act—not taxable.
	b. For a period entirely before Apr. 2, 1919, and partly but not entirely before Nov. 1, 1917.	Revenue Act of 1917. (As concerns so much of the payment as applies to the period after Oct. 31, 1917. The remainder is, in no case, taxable.)
	c. For a period entirely before Apr. 2, 1919, and entirely after Oct. 31, 1917.	Revenue Act of 1917.
	d. For a period partly after Apr. 1, 1919, and partly before Apr. 2, 1919, whether partly before Nov. 1, 1917, or not.	Revenue Act of 1917. (As concerns so much of the payment as applies to the period before Apr. 2, 1919, and after Oct. 31, 1917.)
	e. For a period entirely after Apr. 1, 1919.	Revenue Act of 1918. (As concerns so much of the payment as applies to the period after Apr. 1, 1919.)
		Revenue Act of 1918.

Examples.—(1) A certain social club has two classes of members, active

members paying dues of \$24 a year and associate members paying dues of \$6 a year. The club year runs from September 1 to August 31, inclusive. It is clear that an active member is the "active resident annual member" specified in the Revenue Act of 1918. (See Article 12, below.) On March 25, 1919, Thomas Johnson pays the club \$24 for dues as an active member for the club year 1917-18. Under I b of this article the taxability of so much of this payment as is applicable to the period from November 1, 1917, to August 31, 1918, inclusive, is determined by the Revenue Act of 1917. That Act does tax it and the tax is \$2 (10 per cent of ten-twelfths of \$24).

(2) On April 10, 1919, James Smith pays the same club \$24 for dues as an active member for the club year 1917-18. This payment falls under II b of this article, which gives identically the same rule to follow as I b. So the tax is \$2, as in the first example.

(3) On March 15, 1919, George Jones pays the same club \$24 for dues as an active member for the club year 1918-19. Under I c of this article the taxability of the whole of this payment is determined by the Revenue Act of 1917. That Act does tax it and the tax is \$2.40 (10 per cent of \$24).

(4) On April 13, 1919, William Brown pays the same club \$24 for dues as an active member for the club year 1918-19. Under II d of this article the taxability of so much of this payment as is applicable to the period from September 1, 1918, to April 1, 1919, inclusive, is determined by the Revenue Act of 1917, and the taxability of the remainder by the Revenue Act of 1918. There is a tax under each Act. (See Article 12, below.) As the rate under each Act is 10 per cent, the whole payment is taxable at 10 per cent and the tax is, therefore, \$2.40.

(5) On March 10, 1919, Frank Mason, an associate member of many years' standing, pays the same club \$6 for his dues for the club year 1918-19. Under I c of this article the taxability of the whole of this payment is determined by the Revenue Act of 1917. As neither this amount itself, nor this amount plus an initiation fee paid within the year (it is obvious that no initiation fee will have been paid within the year), is in excess of \$12, it is not taxable.

(6) On April 10, 1919, Daniel Green, another associate member of many years' standing, pays the same club \$6 for his dues for the club year 1918-19. Under II d of this article the taxability of so much of this payment as is applicable to the period from September 1, 1918, to April 1, 1919, inclusive, is determined by the Revenue Act of 1917, and the taxability of the remainder by the Revenue Act of 1918. As we have just seen in the fifth example, the Revenue Act of 1917 levies no tax on such a payment and, therefore, the part coming under that Act is tax free. However, as the dues of "an active resident annual member" are \$24, such a \$6 payment is taxable under the Revenue Act of 1918 (see Article 12, below), and, therefore, the remainder of the payment, amounting to \$2.48 (a trifle less than five-twelfths of \$6) is taxable at 10 per cent under the Revenue Act of 1918, making the tax 25 cents. Thus the total tax on the whole payment is 25 cents.

(7) A certain chapter of a college fraternity imposes dues of \$36 for the fraternity year, which consists of the nine months from October to June, inclusive. On March 21, 1919, Albert White pays the chapter \$36 as dues for the fraternity year 1918-19. Under I c of this article the taxability of the whole payment is determined by the Revenue Act of 1917. That Act does tax it and the tax is \$3.60 (10 per cent of \$36).

(8) On April 16, 1919, John Gray pays the same chapter \$36 as dues for the fraternity year 1918-19. Under II d of this article the taxability of so much of this payment as is applicable to the period from October 1, 1918, to April 1, 1919, inclusive, is determined by the Revenue Act of 1917, and the taxability of the remainder by the Revenue Act of 1918. Under the 1917 Act

there is a tax of \$2.41 (10 per cent of a trifle over six-ninths of \$36). But, as such a chapter is exempt from the Tax on Dues under the 1918 Act (see Article 6, above) there is no tax on the remainder of the payment. The total tax is, therefore, \$2.41.

See also the examples given in article 9, below.

[¶ 662] Art. 9. **Initiation fees.**

Whether any tax is due, and, if so, what tax is due, on a payment made—	Is determined by—
a. On or before Oct. 31, 1917.....	Neither Act—not taxable.
b. After Oct. 31, 1917, but before Apr. 1, 1919.....	Revenue Act of 1917.
c. On or after Apr. 1, 1919.....	Revenue Act of 1918.

Examples.—(1) In the case of a certain chapter of a college fraternity the initiation fees for all members are \$5 and the annual dues \$12. On March 18, 1919, William Edwards, a new member, pays the chapter \$17 as initiation fees and as dues for the calendar year 1919. Under b of this article and I c of article 8, above, the taxability of this whole payment is determined by the Revenue Act of 1917. There is, therefore, a tax of \$1.70 (10 per cent of \$17).

(2) On April 1, 1919, David Jackson, another new member, pays the chapter \$17 as initiation fees and as dues for the calendar year 1919. Under c of this article, the taxability of the \$5 paid as initiation fees is determined under the Revenue Act of 1918. Under II d of article 8, above, the taxability of so much of the \$12 paid for dues as is applicable to the period from April 2, 1919, to December 31, 1919, inclusive, is also determined by the 1918 Act. As the fraternity, under the 1918 Act, is wholly exempt from the Tax on Dues (see Article 6, above), there is no tax on either such initiation fees or such part of the dues. But, under II d of article 8, above, the taxability of the remainder of the payment for dues is determined by the Revenue Act of 1917, and, as the sum of the initiation fees and the annual dues is in excess of \$12, that remainder is taxable and the tax is 30 cents (10 per cent of a trifle over three-twelfths of \$12).

(3) In the case of a certain athletic club the initiation fees for all members are \$5 and the dues for all members \$8. On April 18, 1919, Earl Thompson pays the club \$13 as initiation fees and as dues for the calendar year 1919. Under c of this article the taxability of the \$5 paid as initiation fees is determined by the Revenue Act of 1918. As neither the initiation fees themselves nor the annual dues of "an active resident annual member" are in excess of \$10, this \$5 initiation fee payment is free from tax under the 1918 Act. (See Article 13, below.) Under II d of article 8, above, the taxability of so much of the \$8 paid for dues as is applicable to the period from April 2, 1919, to December 31, 1919, inclusive, is also determined by the 1918 Act. As the annual dues of "an active resident annual member" are not in excess of \$10, that part of the \$8 is also free from tax. (See Article 12, below.) But, under II d of article 8, above, the taxability of the remainder of the payment for dues is determined by the Revenue Act of 1917, and, as the sum of the initiation fees and the annual dues is in excess of \$12, that remainder is taxable and the tax is 20 cents (10 per cent of a trifle over three-twelfths of \$8).

[¶ 663] Art. 10. **Life membership fees.**

Whether any tax is due, and, if so, what tax is due, on a payment made—	Is determined by—
a. On or before Oct. 31, 1917.	Neither Act—not taxable.
b. After Oct. 31, 1917, but before Apr. 1, 1919.	Revenue Act of 1917.
c. On or after Apr. 1, 1919.	Revenue Act of 1918. (Not taxable. But that Act imposes an annual tax on life members. See art. 14, below.)

Examples.—See the examples given in article 14, below.

BASIS OF TAX.

Analysis of Pertinent Provisions of Revenue Act of 1918.

(Section 801.)

<p>“Any amount paid” as</p>	<p>“Dues or membership fees” or “Initiation fees”</p>	<p>“Where the dues or fees of an active resident annual member are in excess of \$10 per year.”</p>
		<p>“If such,” initiation “fees amount to more than \$10,” or</p>
		<p>“If the dues or membership fees (not including initiation fees) of an active resident annual member are in excess of \$10 per year.”</p>

“Life membership.”—Each “life member shall pay annually, at the time for the payment of dues by active resident annual members, a tax equivalent to the tax upon the amount paid by such a member.” But there is “no tax upon the amount paid for life membership.”

[¶ 664] **Art. 11. Revenue Act of 1918 changes basis.**—Under the Revenue Act of 1918 the basis of taxation on club dues and initiation fees and life memberships is different from that in force under the Revenue Act of 1917. To determine which Act governs any particular payment, see articles 8-10, above. For the basis of tax, if the payment is one governed by the Revenue Act of 1918, see the analysis just above and articles 12 and 13, below.

[¶ 665] **Art. 12. Dues or membership fees.**—The Revenue Act of 1918 imposes a tax of 10 per cent on any amount paid as dues or membership fees (including extraordinary dues or assessments, or penalties incurred by failure to pay promptly) to any club which is within the terms of the Act (see articles 1-7, above), provided, that the regular dues or membership fees (including extraordinary dues or assessments levied upon all active, resident, annual members, but not including penalties incurred by failure to pay promptly) of “an active resident annual member” of such club are in excess of \$10 per year. “An active resident annual member” is a member who is neither a life nor a non-resident member, but who in other respects enjoys full club privileges, as distinguished from the restricted privileges enjoyed by a person holding an associate or other partial membership. Additional dues or assessments levied upon all active resident annual members shall be regarded as “regular dues or membership fees” in determining whether or not such dues or fees are in excess of \$10 per year.

[¶ 666] **Examples.**—(1) A certain social club has “members,” nonresident members, associate members, and junior members. “Members” pay an initiation fee of \$15 and regular dues of \$10 per year. Associate members pay an initiation fee of \$10 and regular dues of \$5 per year. Nonresident members and junior members pay still less. In the case of this club a “member” is clearly the “active resident annual member” specified in the Act. As a “member’s” regular dues are not in excess of \$10 per year, none of the dues or membership fees paid by any member of the club are taxable.

(2) A certain athletic club had members, dues, and fees precisely the same as those of this social club, except that the initiation fee of “members” is \$10 and the regular dues of “members” are \$15 per year. As these dues are in excess of \$10 per year, in this case all dues paid to the club by members of any class are subject to tax.

(3) The same athletic club levies in a certain year, in addition to its regular dues, an assessment of \$10 on every associate member and provides a pen-

alty of \$1 if it be not paid within a month after due. This assessment is taxable, and so is the penalty if it be imposed.

(4) A member of this same athletic club violates the house rules and is suspended until he pays a fine of \$15. As a fine is neither dues nor membership fees, this \$15 payment is not taxable.

(5) A certain golf club's dues are \$15 per year. Of this amount \$10 is expended in the purchase for the member of a season ticket to a municipal golf course. The whole \$15 is, nevertheless, taxable as dues.

(6) A certain golf club charges a "green" fee of \$1 for each guest that uses the course. Such a fee is not paid "as dues or membership fees," and is, therefore, not taxable as such.

(7) The members of a certain curling club pay annual dues of \$20. By the payment of \$10 extra per year the privilege of skating on the club's rink can be secured for the member's family. A payment of this extra \$10 is taxable as a membership fee.

(8) A certain social club, the regular dues of which are \$15 per year, has honorary members who pay no dues, but pay assessments when levied. Such members must pay tax on the amounts paid for assessments. (9) A tennis club in which the annual dues are \$10 levies an assessment of \$2 per year on each member to cover cost of tennis balls. The dues, fees, and assessments paid by members of this club are taxable. (10) A certain club, dues and fees of which are taxable, requests a "subscription" of a definite amount from each resident member. Amounts paid by reason of such request are taxable. (11) A social club, the annual dues in which are \$10, levies an assessment of \$5 on members. The tax applies with respect to amounts paid as dues, fees and assessments. (12) A certain social club, the dues and fees of which are taxable, passes a resolution providing that no membership dues or fees shall be collected from members who are in the military service of the United States. Such members thereafter pay no dues or fees and are therefore not liable for payment of tax with respect to membership in the club, but this does not relieve life members who are in the military service from payment of the tax on their life memberships. (13) A certain golf club, the dues and fees of which are taxable, issues to wives of members cards entitling them to the use of the course for one year, making a charge of \$10 therefor. The amounts paid for such cards are taxable. (14) The membership of a certain social club is composed of its stockholders. No dues are collected, but the expenses of the club are met by annual assessments of the necessary amount on each share of stock. If a stockholder enjoying full privileges of the club must pay assessments aggregating more than \$10 per year, then the tax applies with respect to all payments made to the club by any stockholder, whether in excess of \$10 per year or not.

See also the examples given in articles 8 and 9, above, and in article 14, below.

[¶ 667] Art. 13. **Initiation fees.**—The Revenue Act of 1918 imposes a tax of 10 per cent on any amount paid as initiation fees to any club which is within the terms of the Act (see articles 1-7, above); provided, that either (a) such initiation fees amount to more than \$10, or (b) the regular dues or membership fees (not including extraordinary dues or assessments, or penalties incurred by failure to pay promptly) of "an active resident annual member" of such club are in excess of \$10 per year. (See article 12 and the analysis just before article 11, above.) The term "initiation fees" includes any payment to the club required for becoming a member, whether evidenced by a certificate of membership or a share of stock in the club or not.

Examples.—(1) In the case of the social club described in the first example in article 12, above, an initiation fee paid by a “member” is taxable because it amounts to more than \$10, but initiation fees paid by members of the other classes are not taxable.

(2) In the case of the athletic club described in the second example in article 12, above, initiation fees paid by members of any class are taxable, because the regular dues of “an active resident annual member” are in excess of \$10 per year.

(3) A certain tennis club is a stock corporation and each new member has to buy a share of stock in the club. The amount paid for this share of stock is taxable as an initiation fee.

(4) The land of this same tennis club is owned by a corporation, organized for that purpose, in which many of the club members own stock. Money being desired to buy additional land, it is decided to admit no new members to the club except such as will buy, in addition to the share of stock in the club itself, one share of stock in the land-owning corporation. Money paid for this stock in the land-owning corporation is not taxable as an initiation fee.

(5) The same tennis club, at a later stage of its career, drops the requirement of the purchase of stock in the land-owning corporation, but requires each applicant for membership, in addition to paying for his share of stock in the club corporation, to purchase a first mortgage bond secured by the club property. The amount paid for this bond is not taxable as an initiation fee.

See also the examples given in article 9, above.

[¶ 668] **Art. 14. Life memberships.**—Under the Revenue Act of 1918, each life member must pay the same taxes as are imposed by that act on the dues or membership fees (including extraordinary dues or assessments, or penalties incurred by failure to pay promptly) of “an active resident annual member” (see article 12, above) falling due and actually paid on or after April 1, 1919, and must pay them when such dues or membership fees fall due. If the annual dues or membership fees of “an active resident annual member” are regularly payable in several installments, each life member must pay, on the due date of each of such installments falling due on or after April 1, 1919, a tax equivalent to the tax imposed by the Revenue Act of 1918 on the payment, on or after April 1, 1919, of such installment, by such “active resident annual member.” If, however, the “active resident annual members” are divided, as far as installment dates are concerned, into classes, the taxes of each life member shall be payable on the dates on which are payable the installments of dues or membership fees of that class of “active resident annual members” whose first installment of the calendar year is payable earliest in the calendar year. As the Revenue Act of 1918 imposes no tax on the amount paid to become a life member, no such amount paid on or after April 1, 1919, is subject to tax. But amounts paid, on or after November 1, 1917, and before April 1, 1919, for becoming a life member, are subject to a tax of 10 per cent under the Revenue Act of 1917. (See b in article 10, above.)

Examples.—(1) A certain tennis club has the following classes of membership: honorary, life voting, voting, nonresident, women’s, and junior. Here evidently a voting member is the “active resident annual member” specified in the Revenue Act of 1918. A life voting member pays \$500 on admission and is exempt from dues. The dues of a voting member are \$30 a year, payable in advance in three installments of \$10 each, payable January 1, May 1, and September 1, or February 1, June 1, and October 1, or March 1, July 1, and November 1, or April 1, August 1, and December 1, depending on the date on which the voting member was admitted to membership. If any installment is

not paid on or before the 15th day of the month in which it is due a penalty of \$2 must also be paid. In this case each life voting member must pay (to the club, for the Government imposes on it the duty of collection) a tax of \$1 on May 1 and September 1, 1919, and on January 1, 1920, etc. If any one of these taxes is not paid to the club on or before the 15th day of the month in which it is payable, the tax will be \$1.20 instead of \$1. If it happens that an assessment of \$20, in addition to the regular dues and payable November 15, 1919, is levied on the voting members, then a tax of \$2 from each life voting member must also be paid on that date to the club. If the \$500 life voting membership fee was paid before November 1, 1917, or on or after April 1, 1919, it is not itself taxable, but if paid on or after November 1, 1917, and before April 1, 1919, it is subject to a tax of \$50 under the Revenue Act of 1917. (See Article 10, above.)

(2) A certain golf club has two classes of members, life members and "members." A life member pays \$1,000 on admission and is exempt from dues. A "member's" dues are \$60 a year, a \$30 installment for January-June being payable April 1, and a \$30 installment for July-December being payable October 1. In the case of this club it is clear that a "member" is the "active resident annual member" specified in the Revenue Act of 1918. It is also clear that there will be due, from each "member," on his paying on or after April 1, 1919, his installment due on that date, a total tax of \$3, made up of a tax of \$1.50 (for January-March) under the Revenue Act of 1917, and a tax of \$1.50 (for April-June) under the Revenue Act of 1918. (See II d of article 8, above.) It is equally clear that there will be due, from each "member," on his paying his October 1, 1919, installment, a tax of \$3 under the Revenue Act of 1918. (See II e of article 8, above.) John Smith is elected a life member of this club in February, 1919, and in that month pays his \$1,000 fee and a tax of \$100 thereon, under the Revenue Act of 1917. Under the Revenue Act of 1918 he will have to pay (to the club, for the Government imposes on it the duty of collection) on April 1, 1919, a tax of \$1.50, and on October 1, 1919, April 1, 1920, etc., a tax of \$3—the same taxes as that Act imposes on a "member."

(3) A certain social club has three classes of members, life members, active members, and associate members. The regular dues of the active members (clearly the "active resident annual members" specified in the Revenue Act of 1918—see article 12, above) are \$10 per year. Edwin Boyle became a life member in 1916, paying a fee of \$100. That payment was not taxable. (See a in article 10, above.) Nor does he have to pay any annual tax under the Revenue Act of 1918. For by that Act he is to pay the same annual tax as "an active resident annual member," and as the regular dues of "an active resident annual member" are not in excess of \$10 per year, such member pays no tax whatsoever. (See article 12, above.)

(4) A certain golf club has two classes of members, life members and "members." A life member pays \$2,000 on admission and is exempt from dues. A "member's" dues are \$100 a year, payable on February 1 for the whole of the calendar year. Here it is clear that a "member" is the "active resident annual member" specified in the Revenue Act of 1918. As a "member" will have to pay a tax of \$10 on February 1, 1920, a tax of like amount will be due on that date from each life member; but as the 1919 dues of a "member" fell due before the Revenue Act of 1918 became effective no annual tax is due during 1919 from life members.

(5) A certain club, the dues and fees of which are taxable, has life members who do not avail themselves of the privileges of membership. Each of such life members must pay the tax imposed by Section 801 of the Revenue

Act of 1918 so long as he holds a life membership in the club. (6) A certain social club, the dues and fees of which are taxable, passes a resolution providing that no membership dues or fees shall be collected from members who are in the military service of the United States. Such members therefore pay no dues or fees and are therefore not liable for payment of tax with respect to membership in the club, but this does not relieve life members who are in the military service from payment of the tax on their life memberships.

COLLECTION, RETURN, AND PAYMENT OF TAX.

[¶ 669] **Sec. 802.** That every person (a) receiving any payments for such admission, dues, or fees shall collect the amount of the tax imposed by section 800 or 801 from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made, shall collect the amount of the tax imposed by section 800 from the person so admitted. Every club or organization having life members, shall collect from such members the amount of the tax imposed by section 801. In all the above cases returns and payments of the amount so collected shall be made at the same time and in the same manner as provided in section 502.

[¶ 670] **Sec. 502.** That each person receiving any payments referred to in section 500 shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under subdivision (c) or (d) of section 501 to the collector of the district in which the principal office or place of business is located.

No carrier collecting the taxes imposed by subdivision (a) or (b) of section 500 shall be required to list the amount of such tax separately in any bill of lading, freight or express receipt, or other similar documents, if the total amount of the transportation charge and the tax is stated therein.

Any person making a refund of any payment upon which tax is collected under this section may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent monthly return.

The returns required under this section shall contain such information, and be made at such times and in such manner, as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 671] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

The Commissioner with such approval may by regulation provide that any return required by Titles V, VI, VII, VIII, IX, or X not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

[¶ 672] Analysis of above provisions of Revenue Act of 1918.

WHO TO PAY TAX.

Dues or Fees.	Life Membership.
"Person paying" "dues or fees."	"Life member."

WHO TO COLLECT, RETURN, AND PAY OVER TAX.

Dues or Fees.	Life Membership.
"Person receiving" "dues or fees."	"Club or organization."

Returns.

"Monthly returns under oath" (but regulations may allow two witnesses to be used instead of oath for returns of \$10 or less), "in duplicate," to "be made at such times and in such manner" as provided in regulations.

Payments.

"The tax shall, without assessment" or notice, "be due and payable," at the time fixed "for filing the returns," to the collector of internal revenue "of the district in which the principal office or place of business is located."

[¶ 673] Art. 15. **Duty to collect, return, and pay tax.**—Every club, organization, corporation, partnership, or individual receiving any taxable payment for dues or fees must, at the time of such receipt, collect the tax from the person making such payment. And there rests on such person the corresponding duty of then paying such tax. Every club or organization having life members taxable under the Revenue Act of 1918 must collect from such life members the tax imposed on them by that Act. (See article 14, above.) And such life members must, on their part, promptly pay such tax. A monthly return and payment of all such collections must be made in accordance with the provisions of article 16, below. (For penalties, see article 20, below.)

[¶ 674] Art. 16. **Records, returns, and payments.**—Every “social, athletic, or sporting club or organization,” unless expressly exempted from the Tax on Dues (see articles 2-7, above), or unless free from that tax because neither the initiation fees of any class of its members nor the regular dues or membership fees of an “active resident annual member” exceed \$10 per year (see articles 11-14, above), shall keep an up-to-date record showing the number of its members of each class. It shall also keep a record in which shall be entered each day (1) under the head of “Life membership:” (a) the number of life members from whom a life membership tax has been collected on that day, and (b) the total amount of tax so collected; and (2) under the head of each other class of membership: (a) the number of members of that class paying on that day dues or membership fees or initiation fees, (b) the total amount so paid by members of that class, and (c) the total amount of tax collected on such payments. Every such club or organization shall make up each month from this daily record a return in duplicate on Form 729 (revised), in accordance with the instructions printed on the back of that form. This return must be made under oath, unless the amount of the tax returned is \$10 or less, in which case it may be signed or acknowledged before two witnesses instead of being under oath. This return together with the amount of the tax must be transmitted, on or before the last day of the month following that for which it is made, to the office of the collector of internal revenue of the district in which is located the principal office or place of business of the person making such return and payment. (For penalties, see article 20, below.) A copy of Form 729 (revised) will, as far as possible, be mailed each month to every club or organization that filed a return for the preceding month, but a failure to receive such copy will not, of course, excuse a failure to return and pay the tax. A return must be made for each month whether or not taxable dues or fees have been collected. Where a club has no tax to report during any month, this fact should be noted on the return filed for that month. The records above described shall be preserved in the office of the club or organization for a period of two years in such a manner as to be readily accessible on request to internal revenue officers. Additional dues or assessments levied upon all active resident annual members shall be regarded as “regular dues or membership fees” in determining whether or not such dues and fees are in excess of \$10 per year. Examples.—(1) A member of a club, the dues and fees of which are taxable, fails to pay his dues and is carried for a specified time before being expelled. Such member is not liable for payment of tax with respect to unpaid dues so long as they remain unpaid, but should the club succeed in collecting dues covering the period during which the member was delinquent it must account for the tax. (2) A member of a club, the dues and fees of which are taxable, refuses to pay the tax to the club. The club should report the case to the collector of internal revenue for the district in accordance with Article 2 of these Regulations. There is, however, nothing in the law to prevent a club paying the tax for its members if it desires to do so.

CREDITS AND REFUNDS.

[¶ 675] **Sec. 1310.** (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

[¶ 676] **Sec. 1316.** (a) That section 3220 of the Revised Statutes is hereby amended to read as follows:

“Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.”

[¶ 677] **Art. 17. Credit to club for overpayment.**—If a club, organization, corporation, partnership, or individual overpays or overcollects the tax due with one monthly return, credit for the overpayment or overcollection may be taken against the tax due with a succeeding return. In case a credit is claimed, a statement shall be attached to the return setting forth fully the facts regarding the alleged overpayment or overcollection. In the case of the overcollection of a tax no credit for the amount overcollected shall be allowed until the club, organization, corporation, partnership, or individual making the overcollection submits a sworn statement showing that the tax in each case so overcollected has been returned to the person making the overpayment, that no claim for a refund of any of such amount has been filed with the collector or Commissioner on behalf of any of the members who paid such amounts, and a complete list of such members.

[¶ 678] **Art. 18. Refund of overpayment.**—Any club, organization, corporation, partnership, or individual that has paid to the collector of internal revenue, as a tax under section 801 of the Revenue Act of 1918, any amount erroneously or illegally assessed, or any amount in excess of the amount of the tax actually imposed by that section for the month covered by that payment, or any amount as a penalty for the collection of which there was no authority, may secure a refund of the amount so overpaid by filing with the collector to whom such payment was made a properly prepared claim on Form 46 (revised). When a club or organization seeks to secure a refund to it of an amount collected by it from its members and then paid over by it to the collector of internal revenue, the claim on Form 46 (revised) must be accompanied by a list of the members who paid such amount and by a sworn statement of a club officer that no claim for a refund of any of such amount has been filed with the collector or Commissioner on behalf of any of such members.

[¶ 679] **Art. 19. Refund by club of overcollection.**—Every club, organization, corporation, partnership, or individual that has collected from any person, as a tax under section 801 of the Revenue Act of 1918, any amount erroneously or illegally assessed, or any amount in excess of the amount of the tax imposed by that section actually due from such person, shall upon proper application promptly refund such amount to the person entitled thereto, even though such amount has already been paid over to the collector of internal revenue and no corresponding credit (see article 17, above) or refund (see article 18, above) has yet been secured.

PENALTIES.

[¶680] **Sec. 1317** amending Sec. 3176 of Revised Statutes. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

"If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

"The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

[¶681] **Sec. 502.** The tax shall without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶682] **Sec. 1308.** (a) That any person required under Titles V, VI, VII, VIII, IX, X, or XII, to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the revised Statutes, as amended, or of section 605 or 620 of this Act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 683] Analysis of above provisions of Revenue Act of 1918.

Act or default penalized.	Penalty applicable.	Section of Revenue Act of 1918.
"Failure to make and file" return "within the time prescribed" (when return not filed later and reasonable cause shown for failure to file in time).	25 per cent addition to tax (to be collected as part of tax or if tax already collected then in same manner as tax).	Section 3176, U. S. Revised Statutes, as amended by section 1317.
Willfully making "false or fraudulent return."	50 per cent addition to tax (to be collected as above).	Do.
Failure to pay tax when due.....	5 per cent addition to tax. and 1 per cent interest for each full month from the time tax due.	502.
Failure by any "person"* to "pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation."	Penalty of not more than \$1,000.	1308 (a).
Willful refusal by any "person"* to "pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation," or willful attempt "in any manner to evade such tax."	Fine of not more than \$10,000. or Imprisonment for not more than one year, or both.	1308 (b).
Willful refusal by any "person"* to "pay, collect, or truly account for and pay over any such tax."	100 per cent addition to tax.†	1308 (c).

[¶ 684] Art. 20. **Penalties.**—The scope of the penalties applicable to the Tax on Dues is so broad that reference will be made only to their most common applications. Every club or organization, on which there rests a duty (see article 15, above) to file a monthly return on Form 729 (revised), that fails to file such return, and to pay over the tax due thereon, during the month which follows that for which such return should be made, is subject to certain automatic penalties. A mere failure to file the return within that following month causes to automatically accrue the 25 per cent penalty imposed by section 3176 of the Revised Statutes, as amended. The 50 per cent penalty computed on the total tax liability accrues when the return filed is false or fraudulent. A mere failure to pay over the tax within the month following its receipt by the club or organization causes to automatically accrue, under section 502 of the Revenue Act of 1918, a penalty of 5 per cent, and of interest at 1 per cent per month for each full month of delay. Every club member who fails to pay to his club at the proper time the amount of the tax on his dues or fees and every club or organization which fails to collect or truly account for and pay over such tax (see article 15, above) is subject, under section 1308 of the

* "Person" includes "an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs." (Section 1308 (d).)

† "No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended," the substance of which is stated above. (Section 1308 (c).)

Revenue Act of 1918, to a penalty of not more than \$1,000. If this failure amounts to a willful refusal to pay, or an attempt to evade the tax on the part of the club member, or a willful refusal to collect or truly account for and pay over such tax on the part of the club or organization, such willful refusal subjects the offender to a fine of not more than \$10,000, or imprisonment for not more than one year, or both, and, in addition, a penalty of 100 per cent of the amount of the tax. (See sections 1308b and c of the Revenue Act of 1918.) It is the duty of the club officer who has charge of the collection of dues and fees to report to the collector of internal revenue the name and address of any member who refuses to pay his tax, together with the amount of the tax and such other information as will enable the collector to cause a proper investigation to be made.

Example.—A certain social club collects \$1,000 of taxable dues each month, but the treasurer carelessly fails to file a return for April, May, and June, 1919, until September 2, 1919. The taxes and automatically imposed penalties then due for those months would be as follows:

April tax.....	\$100.00	
25 per cent penalty.....	25.00	
5 per cent penalty.....	5.00	
3 months' interest.....	3.90	
		\$133.90
May tax.....	\$100.00	
25 per cent penalty.....	25.00	
5 per cent penalty.....	5.00	
2 months' interest.....	2.60	
		\$132.60
June tax.....	\$100.00	
25 per cent penalty.....	25.00	
5 per cent penalty.....	5.00	
1 month's interest.....	1.30	
		\$131.30
Total of taxes and penalties.....		\$397.80

In addition the club treasurer would be liable to a penalty of not more than \$1,000.

AUTHORITY FOR REGULATIONS.

(Section 1309 of Revenue Act of 1918.)

[¶ 685] Art. 21. **Promulgation of regulations.**—In pursuance of this provision of the Act the foregoing regulations are hereby made and promulgated and all rulings inconsistent with them are hereby revoked.

Issued Dec. 20, 1920.

WM. M. WILLIAMS,
Commissioner of Internal Revenue.

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EXCISE TAXES

ON

SALES BY THE MANUFACTURER

SECTION 900, TITLE IX, OF THE
REVENUE ACT OF 1918

Law,
Regulations No. 47, and
Treasury Decisions

Indexed

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LAW,
REGULATIONS No. 47 AND TREASURY DECISIONS
RELATING TO
EXCISE TAXES
ON
SALES BY THE MANUFACTURER

IMPOSITION OF TAX

[¶ 686] **Sec. 900.** That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased—

[¶ 687] **Article 1. Effective date.**—The tax is imposed on all articles sold or leased by the manufacturer, producer, or importer on or after February 25, 1919, even though manufactured, produced, or imported before that date.

[¶ 688] **Art. 2. Use of terms.**—In these regulations, for convenience, unless obviously inapplicable, the term “manufacturer” is used to include also “producer” and “importer”; the term “sale” or “sold” to include “lease” or “leased”; the term “purchaser” to include “lessee,” and the term “vendor” to include “lessor.” The term “person” is used to include partnerships, corporations, and associations, as well as individuals.

[¶ 689] **Art. 3. Basis of tax.**—The tax is imposed on the sale by the manufacturer and should be returned and paid by him whether the sales price is actually collected or not. It is measured by the price for which the article is sold by the manufacturer and not by the list price where that differs from the actual sales price. If the price of a taxable article is increased to cover the tax, and the article is sold at such price, including the tax, the tax is on such increased price. -

The manufacturer may reimburse himself in the amount of the tax by agreement with the purchaser in the following manner: (a) By quoting the selling price and the tax in separate and exact amounts, and where invoices are rendered, by segregating these amounts on the invoices as outlined in examples (1) and (6) below; or (b) by stating to the purchaser in advance of the sale what portion of the quoted price represents the price charged for the article and what portion represents tax, and where invoices are rendered by invoicing in the manner outlined in examples (2) and (3) below, in which cases the amount of the tax need not be included in the price of the article in computing the tax.

Where goods are ordered direct from the manufacturer with no agreement as to price, the tax is based on the amount billed or invoiced to the purchaser as the selling price. Mere statements or agreements that the quoted or contract price includes the tax do not operate to exclude any part thereof from tax, unless the price is billed in the manner outlined in examples (1), (2), (3), or (6) below.

Where a lump sum is specified as the price of a taxable article or articles, and other articles not taxable and not a component part of the taxable articles are included in the price, the tax attaches to the entire amount unless the selling prices of the taxable and nontaxable articles are segregated. In such case the tax will be measured by the price specified as the selling price of the taxable article or articles (examples 4 and 5). The following examples illustrate the method by which the manufacturer may separate the tax from the selling price in invoicing goods to the purchaser.

Example (1). A, the manufacturer, quotes a selling price to B of \$1 and bills the goods to B as: “Article No. 1, selling price, \$1; tax, \$0.05.”

Example (2). A, the manufacturer, quotes a selling price of \$1.05, stating that the price includes a tax of 5 cents, and bills the goods to B as: "Article No. 1, selling price, \$1.05; 5 cents of the total represents tax."

Example (3). A, the manufacturer, quotes a selling price of \$1.05, stating that 1/21 of the price represents tax, and bills the goods to B as: "Article No. 1, selling price, \$1.05; 1/21 of the total represents tax."

The tax in examples (1), (2) and (3) is computed upon \$1, the quoted and actual selling price.

Example (4). A, the manufacturer, quotes a cost price or contracts to sell goods at \$1.05, including tax, and bills the goods to B as: "Article No. 1, selling price, including tax, \$1.05."

The tax is computed upon \$1.05, the quoted and invoiced selling price.

Example (5). A manufacturer sells an automobile to B, including insurance, gas, and oil, and bills it as: "One car, \$2,150."

The tax is based on the full amount of \$2,150.

Example (6). If in example (5) the invoice separates the charges into items as, "car \$2,000, gas and oil \$20, insurance \$30, tax \$100," the tax is based on \$2,000, the selling price of the car as specified.

[¶ 690] Art. 4. **Discounts and expenses.**—A discount for cash or discount made subsequently to the sale can not be deducted in computing the price for the purpose of the tax.

An adjustment in price, where articles are sold over a period of time, under an agreement for a quantity rebate, or an agreement for a rebate on goods remaining unsold in the hands of the dealer, and which were purchased by such dealer within a definitely specified period, in case of a decline in the market, is held not to be a discount made subsequently to the sale, and the tax, if originally computed on the gross price, may be adjusted in the return for the month in which the price is finally determined. If in such cases the tax assumed to be due on the original selling price has been billed to the dealer and by him to the purchaser as a separate item and collected from the purchaser the overcollection of tax arising from the adjustment of the sale price under the contract between the manufacturer and the dealer must be refunded to the purchaser.

Commissions to agents and other expenses of sale are not deductible from the price.

Freight and delivery charges are taxable as part of the sales price when the price to the purchaser includes transportation and delivery charges paid by the manufacturer, or when the amount charged the purchaser, whether billed as a separate item or not, does not represent the actual transportation charges.

Freight and delivery charges are not part of the sales price when the goods are sold at the factory or f. o. b. cars at place of manufacture, when the transportation charges are paid by the purchaser as a specific item, or when the goods are sold delivered at a definite price less actual transportation charges to be paid by the purchaser.

[¶ 691] Art. 5. **Exchanges.**—If articles sold are returned and the sale entirely rescinded, no tax is payable, and if paid it may be credited against the tax included in a subsequent monthly return. (See article 41.) If a part only of the articles sold at one time is returned, and credit or rebate allowed by the vendor therefor, the portion of the tax to be credited will be only the proportion of the total tax paid which the amount allowed as a credit or rebate bears to the total sales price of all the articles.

[¶ 692] If an article is sold under a guaranty as to its quality or service and is thereafter returned and a rebate made pursuant to the guaranty, the manufacturer may claim as a credit against the tax included in a subsequent return such portion of the tax originally paid in respect of the article as is proportionate to the amount of the price refunded.

Where any article taxable under section 900 is returned to the manufacturer thereof for adjustment, replacement, or exchange, under a guaranty as to quality or service, and a new article given pursuant to a guaranty, free or at a reduced price, the tax shall be computed on the actual price, if any, to be paid to the manufacturer for the new article.

If an article is sold and thereafter, before use, exchanged for another article of a higher price, the purchaser paying the difference, the manufacturer should pay the tax on the second sale, but may take as a credit against such tax such part of the tax paid on the returned article, which the amount allowed as a credit for the return of such article on the second sale bears to the amount of the purchase price in the case of the first sale. The tax also attaches to the subsequent sale by the manufacturer of the article so returned.

[¶ 693] Art. 6. **Credit for taxes already paid.**—A manufacturer may take as a credit against the tax imposed on him in respect to the sale of any article taxable under section 900 an amount equal to any tax imposed under section 900 which he has reimbursed to the manufacturer from whom he purchased any article forming a component part (whether or not changed in form by process of manufacture) of the article sold by him and in respect to which tax is paid by him, provided the tax was billed to him as a specific item and in the exact amount of the tax. Credit is not allowed unless: (1) The article forms a component part of an article sold by such manufacturer and in respect to which a tax is payable by him; (2) such manufacturer has, in fact, reimbursed the manufacturer from whom purchased, who has himself, in fact, paid the tax upon which such credit is sought; (3) unless the taxpayer keeps such records and evidence as will clearly establish his right to the same.

The following records and evidence will be deemed sufficient to establish this right of exemption: (1) Any record or statement showing the exact amount of tax paid upon such articles; (2) a certificate or statement of the following tenor: "The undersigned hereby certifies that the articles on which credit for tax is claimed were tax paid and that said articles were used by _____ in the further manufacture of other articles taxable under section 900 of the Revenue Act of 1918. (Signed)_____." In cases of doubt, in order to avoid penalty for default if the claim is not established, the tax should be paid in full and application made for refund.

[¶ 694] Art. 7. **Who is a manufacturer.**—A manufacturer is generally a person who (1) actually makes a taxable article, or (2) by changes in the form of an article produces a taxable article, or (3) by the combination of two or more articles produces a taxable article. Under certain circumstances, however, the person who actually makes, produces, or assembles the taxable article is not the manufacturer for the purpose of the tax. There may be several stages of manufacture and several manufacturers, each of whom must pay a tax. In such cases the tax attaches on successive sales, subject to the provisions as to credits (see art. 6). The following examples are merely illustrative:

Example 1. "A," an automobile manufacturer, sells an automobile in a knockdown condition but complete as to all the component parts. "B," a dealer, assembles these component parts into a complete usable automobile, without further manufacture, and sells the automobile. "A" is the manufacturer.

Example 2. "A," an automobile body manufacturer, sells an automobile body in a knockdown condition, but complete as to all its component parts, to "B," a dealer, who assembles these component parts into a complete usable automobile body, and installs it, or causes it to be installed on a chassis which he has purchased from a manufacturer who is a different person from the manufacturer of the body, and sells the completed automobile. "A" is the manufacturer of the automobile body, but may sell the same to "B" tax free under the certificate provided for in article 14. "B" is the manufacturer of the automobile and subject to tax on the selling price of the completed automobile, but may take credit for the amount of tax paid by the manufacturer of the chassis. (See arts. 3 and 6.)

Example 3. "A," a dealer or jobber, contracts with "B" for the manufacture of a taxable article, whereby "B" receives from "A" the cost of materials and labor plus a specified profit. "A" is the manufacturer.

Example 4. "A," a dealer or jobber, contracts with "B," for the manufacture of a taxable article, whereby "A" furnishes "B" all or a portion of the material to be used and pays "B" for the labor plus a specified profit. "A" is the manufacturer.

Example 5. "A," a dealer or jobber, owns a patent, trade-mark, formula, or recipe for a taxable article, and contracts with "B" for the manufacture thereof, the contract specifying that "B" can manufacture the article only for "A"; that "A" will take the entire output, and that it will be sold by "A" as the manufacturer, "B's" name not appearing on the article. "A" is the manufacturer.

[¶ 695] **Art. 8. Tax payable by the manufacturer.**—The tax is to be paid by the manufacturer on all sales made directly by him or through an agent.

If the manufacturer has a sales agent or sales agency to whom he only nominally sells an article, but retains an interest in the profits from the resale of the article, the taxable sale is that made by the sales agent or sales agency.

On articles manufactured for a jobber by a foreign manufacturer, the jobber must pay the tax as the importer.

A receiver or trustee in bankruptcy of a manufacturer conducting a business under court order is liable to the tax upon articles sold by him.

Where a manufacturer consigns articles to a dealer, retaining ownership in them until they are disposed of by the dealer, the manufacturer must pay the tax upon the basis of the manufacturer's selling price on all goods sold to the dealer, as shown by reports to be procured by him monthly from the dealer. Where the agent of a manufacturer makes a sale, it is to be treated as a sale by the manufacturer.

Where a so-called sales agent or distributor is a separate corporation and the sale to it is absolute and at prices and under terms and conditions such as ordinarily obtain between persons dealing at arms length with no further payment or benefit accruing to the manufacturer upon resale or otherwise except the receipt of dividends on stock holdings, the taxable sale is that made by the manufacturer to such sales corporation even though all or substantially all of the stock of such sales corporation is held by or for the benefit of the manufacturer or the stockholders in the manufacturing corporation. Where, however, there are special arrangements between the manufacturer and the selling corporation such as special terms, prices, etc., the taxable sale is the sale by the selling corporation as the selling agent of the manufacturer. The same rule applies in the case of the selling corporation which owns substantially all the stock of a manufacturing corporation.

[¶ 696] Art. 9. **When tax attaches.**—The tax attaches when the title to an article passes from the manufacturer to the purchaser pursuant to a contract of sale.

When title passes is a question of fact dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances.

Where goods are segregated from other goods owned by the vendor and it is the intention of both the vendor and the purchaser at the time the goods are so segregated that they shall then belong to the purchaser, the title will be presumed to pass at such time.

In the absence of an intention to the contrary the title is presumed to pass upon delivery of the article to the purchaser or to a carrier for the purchaser.

In the case of a conditional sale, where title is reserved in the vendor until payment of the purchase price in full, the tax attaches (a) upon such payment, or (b) when title passes if before completion of the payments, or (c) when, before completion of the payments, the dealer disposes of the sale by charging off by any method of accounting he may adopt the unpaid portion of the contract price, or (d) when the vendor discounts the notes of the purchaser for cash or otherwise, or (e) when the vendor transfers to another his title in the article sold.

[¶ 697] Art. 10. **Sales to the Government or a State.**—The tax applies to articles enumerated in section 900, except those enumerated under subdivision (10) (see art. 23), when sold to the United States Government. The same is true of articles sold to a State or political subdivision thereof, even though they are to be paid for entirely out of public moneys and are to be used in the carrying on of governmental operations. Where the Government supplies a manufacturer with all materials and parts, except a small portion furnished by the manufacturer under a contract stipulating that the manufacturer shall be guaranteed a certain profit, no tax is payable. Articles manufactured for Government use in plants taken over and operated by the Government are not subject to tax. The rules applicable to the taxability of sales to the United States Government apply equally in the case of articles sold to foreign Governments. (See also art. 23.)

AUTOMOBILES

[¶ 698] Sec. 900. (1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

(2) Other automobiles and motorcycles, (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum.

[¶ 699] Art. 11 (as amended by T. D. 2989, approved March 3, 1920). **Automobiles; scope of tax.**—An automobile truck, automobile wagon, or other automobile is a self-propelling vehicle designed to transport along highways and roads, persons or property, or both. Where the vehicle is capable of transporting both property and persons, the primary use for which it is designed will control as to whether it is taxable at 3 per cent under subdivision (1) as an automobile truck or automobile wagon, or at 5 per cent under subdivision (2) as an "other automobile." The act specifically exempts tractors. A tractor is a machine, operated and controlled by its own motive power, and designed to draw or pull, as distinguished from carry, a load. So-called tractors or "semi-tractors," which carry a portion of the load, are taxable as automobile trucks or automobile wagons. Trailers are not taxable. A trailer is a vehicle not operated or controlled by its own motive power, but which is

pulled or drawn behind another vehicle containing the motive power. So-called trailers or "semi-trailers" so designed that a portion of the load or the weight thereof is carried or borne by the tractor or "semi-tractor," are taxable as "parts" of automobile trucks or automobile wagons. A usable substantially completed automobile or automobile truck produced by assembling new parts of trucks or cars is subject to tax, but a rebuilt car is not subject to tax as such, although the new parts thereof are subject to tax when sold by the manufacturer, even though assembled into a new car. Automobiles which have been sold by the manufacturer are not taxable when sold again. (See Articles 12 and 13, for examples of articles taxable and not taxable, and Article 15 for the classification of chassis.)

[§ 700] Art. 12 (as amended by T. D. 2989, approved March 3, 1920). **Automobile trucks and automobile wagons.**—The tax is 3 per cent of the price for which automobile trucks and automobile wagons are sold by the manufacturer. It applies to automobile trucks and automobile wagons primarily designed or adapted for the transportation of property along highways and roads, although persons may incidentally be transported at the same time, as outlined in Article 11, and to automobile truck and automobile wagon chassis, as defined in Article 15. For example, fire apparatus, including fire engines, hose carts, hook and ladder trucks, water-tower trucks, etc., tank trucks for carrying oil, gasoline, water, etc., moving and furniture vans and drays, delivery wagons, etc., are all taxable as automobile trucks and automobile wagons. Automobile hearses are taxable as automobile trucks or automobile wagons. An automobile truck or automobile wagon formed by joining together a so-called tractor or "semi-tractor" which carries or bears a portion of the load, and a so-called trailer or "semi-trailer," is taxable as a whole as an automobile truck or an automobile wagon. When sold separately, the so-called tractor or "semi-tractor" is taxable as an automobile truck or automobile wagon, and the so-called trailer or "semi-trailer" as a "part" of an automobile truck or an automobile wagon. Motor driven machines for pulling or drawing vehicles around factories and railway stations, and small trucks for handling baggage and trunks at railway stations and for transporting materials, articles or goods around factories, adapted for restricted use in factory yards or elsewhere as distinguished from use on highways and roads, are not subject to tax. Self-propelling motor driven machines such as concrete mixers, stone crushers, excavating shovels, ditch diggers, etc., and machines which perform a mechanical function as they move along highways and roads, such as road graders, road scrapers, street sweepers, road sprinklers and oilers, are not taxable. Where, however, the mechanical part of a machine, as the mixing machine of a concrete mixer, the blades of a road scraper, the tank of a street sprinkler or the boiler of a road oiler is superimposed or mounted on a truck chassis, the chassis is taxable at 3 per cent when sold by the manufacturer. Motor driven machine gun and artillery carriages of the tractor type, motor driven railroad cars and vehicles designed and adapted solely for use on rails or tracks, and not capable of use on highways and roads, are not taxable. Any tires, inner tubes, parts or accessories for automobile trucks and automobile wagons sold on or in connection therewith or with the sale thereof are taxable at 3 per cent as part of the selling price of the automobile truck or automobile wagon. This applies only to such tires, inner tubes, parts or accessories as are not in excess of the quantities usually sold in the ordinary course of trade to a single customer at the time and in connection with the sale of an automobile truck or an automobile wagon. Any quantity of tires, inner tubes, parts or accessories in excess of this amount is taxable under subdivision (3) at 5 per cent of the selling price thereof.

[¶ 701] Art. 13 (as amended by T. D. 2989, approved March 3, 1920). **Other automobiles and motorcycles.**—The tax is 5 per cent of the price for which such articles are sold by the manufacturer. It applies to automobiles primarily designed for carrying persons, although property may incidentally be transported at the same time, as outlined in Article 11, and to other automobile chassis as defined in Article 15. It also applies to all motorcycles sold separately and to motorcycles sold with side cars attached. Automobiles that are designed and primarily adapted for the transportation of persons as distinguished from property, are taxable as "other automobiles." For example, ordinary passenger or pleasure cars, taxicabs, automobile busses, sight-seeing cars, hotel busses, omnibusses, police patrols, ambulances, cars used by fire department chiefs and marshals, mourners' coaches with accommodations for persons other than that afforded by the seat occupied in whole or in part by the driver, etc. Where an automobile chassis of such construction that it is ordinarily used as an automobile truck or an automobile wagon, is fitted with a body designed for the carriage of persons, the completed whole is taxable at 5 per cent as an "other automobile." A sidecar sold separately from a motorcycle is taxable as a "part" under subdivision (3). Tires, inner tubes, parts and accessories for other automobiles and motorcycles sold on or in connection therewith or with the sale thereof or separately are taxable at 5 per cent.

AUTOMOBILE PARTS AND ACCESSORIES.

[¶ 702] Sec. 900. (3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1), or (2) sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum;

[¶ 703] Art. 14 (as amended by T. D. 2989, approved March 3, 1920). **Tires, inner tubes, parts, and accessories sold to manufacturers.**—The words "tires, inner tubes, parts, or accessories" shall be understood to embrace only such tires, inner tubes, parts, or accessories as have reached such a stage of manufacture that they constitute articles commonly or commercially known as "tires, inner tubes, parts, or accessories," and shall not be understood to embrace raw materials used in the manufacture of such articles. Unvulcanized sheet rubber, liquid vulcanized rubber cement, and friction fabrics are considered raw materials and are exempt from tax. Any article which has reached a state of manufacture wherein it is in itself a component part or accessory and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer is subject to tax as a "part or accessory." Subdivision (3) exempts from tax, sales of tires, inner tubes, parts, or accessories to a manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts, or accessories. In order for the sale to come within the exemption of the statute, the vendor must also at the time the goods are shipped or sold (whichever is prior) have in his possession an order or contract of sale, with certificate of the purchaser in writing, printed thereon or permanently attached thereto, to the effect that the purchaser is a manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts, or accessories; that he is purchasing the articles in question as such manufacturer or producer for resale in some form or manner, or for free replacement under contract or guaranty; and that he will account to the internal revenue collector and pay the tax on the sale of such articles, unless such sales by him are made to another manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts, or accessories for resale by him in some form or manner or for free replacement, in which case he will require

the same form of certificate from such manufacturer or producer; that when such tires, inner tubes, parts, or accessories are sold other than on or in connection with the sale of new automobile trucks, wagons, automobiles, or motorcycles he will pay the tax on such sales (unless made to a manufacturer or producer, or for free replacement under a contract or guaranty); that when such articles are sold on or in connection with the sale of such new vehicles he will pay the tax on the selling price of such vehicles, including such articles. Said manufacturers furnishing such certificate will be deemed manufacturers within the meaning of the law and subject to the tax imposed on sales of such articles by manufacturers, unless the sales are made to another manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts or accessories for resale by him in some form or manner or for free replacement under a contract or guaranty, and who furnishes a certificate so stating. Following is a form of the certificate or statement which will be accepted, and in substance must be strictly adhered to:

FORM OF CERTIFICATE

The undersigned hereby certifies that he is a manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts or accessories, and that the tires, inner tubes, parts, or accessories purchased hereunder are purchased by him as such a manufacturer or producer for resale in some form or manner, or for free replacement under contract or guaranty, and agrees if any of the tires, inner tubes, parts, or accessories are sold by him exempt from tax to another manufacturer or producer of automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts, or accessories for like purposes, he will require a similar certificate from such manufacturer or producer. The undersigned further agrees that in respect to all tires, inner tubes, parts, or accessories sold by him, unless such sale is made to such a manufacturer or producer, he will pay the tax on such sale direct to the internal revenue collector, including it in his tax return covering the month in which such sale is made; said tax to be paid on the basis of the taxpayer's selling price of such articles when sold other than on or in connection with the sale of new automobile trucks, automobile wagons, other automobiles, motorcycles, tires, inner tubes, parts, or accessories, and on the selling price of such vehicles or articles when the same includes such articles.

If it is impracticable to furnish a certificate for each order, a certificate covering all orders between given dates (such period not to exceed a month) will be accepted. If in any case such an order and certificate cannot be produced on demand of any authorized agent of the department, the tax in respect to the sale will be considered in default. Where the form of certificate outlined in this article is used it must be in the exact form specified except that when such form is used to cover orders for a period of one month, the language may be altered to indicate that fact.

[¶ 704] Art. 15 (as amended by T. D. 2989, approved March 3, 1920).

Definition of parts.—A “part” for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, and which is primarily adapted only for use as a component part of such vehicle. The term includes bodies, wheels, engines, springs, axles, radiators, etc. When sold separately a side car and a so-called trailer or “semi-trailer” so designed that a portion of the load or the weight thereof is carried or borne by the tractor or “semi-tractor,” are taxable as “parts.” Mere stock or commercial commodities such as bolts, nuts, washers, screws, etc., though used as components for such vehicles, are not “parts” within the meaning of subdivision (3). Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted

for use as component parts of such vehicles. Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as such a component part. Thus plates, jars, and separators for automobile storage batteries are taxable when sold separately. Blow-out shoes and reliners of tires are subject to tax as "parts" regardless of the fact that they may be made from old casings.

A chassis provided with a "superstructure" of such design that it is without such substantial additions adaptable for hauling heavy loads is an "automobile truck" or "automobile wagon" and taxable at the rate of 3 per cent when sold by the manufacturer thereof. The term "superstructure" means any chassis frame of steel or wood or other material which is adaptable by the additions of a few bolsters or planks for carrying a heavy load. A chassis not so equipped is an "other automobile" or a "part" taxable at the rate of 5 per cent when sold by the manufacturer thereof unless (1) the manufacturer has actual knowledge from the construction of the chassis which he sells that it is to be used as an automobile truck or automobile wagon or has in his possession at the time the chassis is shipped or sold (whichever is prior) an order or contract of sale with a certificate of the purchaser in writing, printed thereon or permanently attached thereto, showing that the chassis specified in the order is to be so used, in which case the chassis will be taxable at the rate of 3 per cent when sold by the manufacturer thereof; or (2) unless the manufacturer has in his possession at the time the chassis is shipped or sold (whichever is prior) an order or contract of sale of the purchaser in writing printed thereon or permanently attached thereto, showing that the chassis specified in the order is to be used by him in the further manufacture and sale of an automobile truck, automobile wagon, or other automobile, in which case the chassis may be sold as a "part" free from tax if the purchaser furnishes the certificate provided for in Article 14, for purchasing parts tax free. In the case of a chassis which is taxable as an automobile truck or automobile wagon at the rate of 3 per cent, or in case the chassis is taxable as an "other automobile" at 5 per cent, the manufacturer of the chassis must return the tax to the Government in all instances. It should be noted that a chassis which is essentially an automobile truck or automobile wagon chassis, cannot be sold tax-free under the certificate provided for in Article 14. The exemption from tax in the sale of a chassis can be taken advantage of only in the sale of a chassis that is essentially a passenger car chassis (as distinguished from an automobile truck or automobile wagon chassis), which is to be used by the purchaser in the further manufacture and sale of an automobile truck, automobile wagon, or other automobile. In case the purchaser of the chassis reimburses the tax to the manufacturer and further completes the chassis by the addition of a body and sells the completed automobile truck, automobile wagon or other automobile, the tax must be paid on the selling price of the complete automobile truck, automobile wagon, or other automobile less any tax already reimbursed to the manufacture of the chassis.

A taxpayer who purchases tires, inner tubes, parts or accessories for use in further manufacturing an automobile truck, automobile wagon, other automobile or motorcycle, may purchase them tax exempt by furnishing the certificate provided for in Article 14. In all cases where a subsequent manufacturer does not furnish the certificate provided for in Article 14, but reimburses the prior manufacturer for tax, if the subsequent manufacturer uses such tires, inner tubes, parts, or accessories, in the manufacture of an automobile truck, automobile wagon, other automobile, motorcycle, tire, inner tube, part, or accessory, he must take credit for the tax so reimbursed in the same manner as

is provided in the case of a chassis. If a person, partnership, or corporation manufactures for sale separately parts or accessories and is also engaged in the business of repairing and rebuilding automobiles, automobile trucks, automobile wagons, other automobiles or motorcycles, such parts or accessories used for repair or rebuilding purposes are subject to taxation upon the amount charged for the entire job, unless the amount charged for the parts so used is billed separately, in which case the tax will attach to the sale price of the parts only.

Added by T. D. 3116 (approved January 14, 1921). A concern which does not manufacture for sale separately any part or accessory, but is engaged in doing strictly a repair business, and makes only occasionally a part which may be needed for an immediate repair job performed by it, is not considered a manufacturer and is not required to pay any tax in respect to parts so manufactured and used.

A person, partnership, or corporation engaged in the business of building over automobile tops or bodies for installation on new or old chassis is not considered to be doing strictly a repair business, even though all such tops or bodies are manufactured as needed for an immediate job, but is held to be a manufacturer of automobile "parts or accessories" and subject to tax as such.

[¶ 705] Art. 16 (as amended by T. D. 2989, approved Mar. 3, 1920. **Definitions of accessories.**—An "accessory" for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation. The term "accessories" includes, for example, automobile tops, back and side curtains, horns, speedometers, self-starters, spot lights, shock absorbers, tire pumps, pressure gauges, and hydrometers. Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motorcycles are not subject to tax as "parts or accessories." Thus a wrench or other tool of a kind ordinarily sold in hardware stores for general purposes is not subject to tax when sold separately, but if incorporated in an automobile tool kit, is taxable as part of the complete kit. A wrench or other tool of special design or construction primarily adapted for use in connection with automobiles is taxable. If any doubt exists as to the special adaptability of any article, the fact of its sale by the manufacturer to be used with an automobile, or to an automobile accessories dealer, would determine its taxability. Robes, goggles and lunch kits are not subject to tax. Asbestos brake band linings, generator tubing, and radiator hose are not subject to tax unless sold in prepared sizes, lengths, shapes, or with such fittings as make them adapted for use only on or in connection with automobiles. Parts or accessories for automobile trucks, automobile wagons, other automobiles or motorcycles primarily adapted for use on or in connection therewith when sold for any other purpose are not taxable provided the purchaser files with his order a statement that such parts or accessories are to be used on or in connection with another article of commerce not enumerated or included in subdivisions (1), (2) or (3) of Section 900. For example, a self-starter primarily adapted for use on an automobile if sold to a manufacturer of motor boats, such manufacturer stating in his order that it is to be used in the manufacture of a motor boat and not upon an automobile, is not taxable.

MUSICAL INSTRUMENTS.

[¶ 706] **Sec. 900.** (4) Pianos, organs (other than pipe organs), piano players, graphophones, phonographs, talking machines, music boxes, and records used in connection with any musical instrument, piano player, graphophone, phonograph, or talking machine, 5 per centum.

[¶ 707] **Art. 17. Musical instruments.**—The tax is 5 per cent on the price for which the articles enumerated are sold by the manufacturer. Player pianos are pianos. Where a person other than a manufacturer of the player action completes the player piano by installing the action in the piano, the tax must be paid on the selling price of the complete player piano, and, conversely, where the manufacturer of the player action purchases pianos and turns out a complete player piano, he must pay the tax on the selling price of the player piano. (See art. 6 for provisions governing credit for tax previously paid.)

Accessories and parts, other than records, for the articles enumerated, are not taxable unless sold in combination therewith. Dictagraphs and dictaphones are not subject to the tax. So-called "toy" talking machines, pianos, music boxes, etc., are taxable only if capable of use as practical musical instruments.

The law specifically exempts pipe organs. Orchestrions, etc., that are pipe organs but have a standard or modified piano player action incorporated therein, are not subject to tax as player pianos or piano players. If the player action is purchased from the manufacturer thereof by the manufacturer of the orchestrion, etc., the sale by the manufacturer of the player action is taxable. If the player action is manufactured by the manufacturer of the orchestrion, the tax attaches to that portion of the selling price of the completed article which represents the price charged for the player action.

Orchestrions, mechanical violin players, etc., that are not pipe organs, are not specifically taxed under the act. The basis of tax on such instruments, where a standard or modified piano player action is incorporated therein, is the same as outlined herein for orchestrions, etc., that are pipe organs.

SPORTING GOODS.

[¶ 708] **Sec. 900.** (5) Tennis rackets, nets, racket covers and presses, skates, snowshoes, skis, toboggans, canoe paddles and cushions, polo mallets, baseball bats, gloves, masks, protectors, shoes and uniforms, football helmets, harness and goals, basket-ball goals and uniforms, golf bags and clubs, lacrosse sticks, balls of all kinds, including baseballs, footballs, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards and pieces, dice, games and parts of games (except playing cards and children's toys and games), and all similar articles commonly or commercially known as sporting goods, 10 per centum.

[¶ 709] **Art. 18. Sporting goods.**—The tax is 10 per cent of the price for which the articles enumerated are sold by the manufacturer, producer, or importer.

The Act taxes certain articles specifically, such as tennis rackets, baseball bats, etc., games and parts of games (except playing cards and children's toys and games), and all similar articles commonly or commercially known as sporting goods.

The term "similar articles commonly or commercially known as sporting goods" includes all articles of a character or nature similar to those specifically mentioned in the Act, whose primary purpose is for use in connection with a game or sport, whether indoor or outdoor.

Ordinary playing cards are specifically exempt from tax under section 900, but are subject to tax under Title XI of the Act. Card games, other than ordinary playing cards, and other devices to be played as games by adults as well as children, are subject to the tax.

Gymnasium and playground equipment (except balls), such as dumbbells,

Indian clubs, exercises and chest weight machines, rowing machines, trapeze, rings, horses, striking bags, etc., are not subject to tax.

The Act taxes baseball shoes. For the purpose of tax "similar articles" are held to be any shoes primarily designed and intended for use in connection with a game or sport, and which are of such design or construction, or are fitted with such attachments or appurtenances that they are especially adapted for such use. Thus shoes with skates attached, or specially designed and adapted for use only as skating shoes, football shoes equipped with cleats, spiked, golf, jumping, running shoes, marathon running shoes, and indoor running and jumping shoes, are subject to the tax. Ordinary rubber-soled shoes, although used in golf, tennis, basket ball, etc., are not taxable, unless of such special design or construction that they are not customarily used for general wear as distinguished from wear in connection with a particular game or sport.

The Act taxes baseball and basketball uniforms. For the purpose of the tax a baseball uniform shall be construed to consist of a cap, shirt, and pants. Baseball shoes are taxed separately from the uniform. For the purpose of the tax the term "similar articles" includes articles of clothing designed, intended, and especially adapted for use as part of a uniform of a game or sport, as distinguished from articles of clothing of general wear, with incidental use as part of such uniform. Thus, belts and hose are used incidentally by participants in athletic events, such as baseball, football, golf, etc., but are also articles of general wear apart from games or sports and, therefore, are not subject to the tax.

Among the articles, not all of which are specifically mentioned in the Act, but which are subject to tax, the following, while not intended to be exhaustive, will serve for purpose of illustration: Archery equipment, such as bows, arrows, quivers, belts, targets and stands, arm guards, arrow points, etc.; athletic equipment, such as hammers and handles, putting shots, weights, discus, javelins, hurdles, sprint lanes, vaulting poles, jumping standards and cross-bars and cord, circles, toe and take-off boards, potato, sack, and three-legged race equipment, cases for carrying hammers, shot abdomen protectors, eyeglass protectors, etc.; baseball equipment, such as balls, gloves, mitts, masks, bat bags, pitcher's box and pitcher's toe plates, batting cage, bases, straps and spikes, leg guards (body protectors), sliding pads (umpire body protectors), (umpire indicators), scoring tablets, etc.; basket-ball equipment, such as balls, ball holders (bladders), nets, goals, thumb protectors, etc.; bowling and pool balls and equipment; boxing gloves, boxing helmets; balls of all kinds, including baseballs, indoor baseballs, basket balls, footballs, including bladders, covers, and carrying cases, medicine balls, etc.; hand ball gloves and mitts; basket-ball knee and elbow pads; cricket equipment, such as bats, gloves, bags, stumps, bails, nets, leg guards, and balls; lawn bowls; croquet equipment, such as balls, mallets, wickets, and stakes; fishing rods and reels and rod and reel containers; football equipment, such as balls, goals, cases for carrying balls, linesman measuring outfit, pads, shin guards, (mouthpieces), (braces), head harness (knee braces), leg guards, gloves, thigh guards, nose guards, etc.; fencing foils, guards, swords, sticks, masks, protectors, gloves, blades, hilts, etc.; golf clubs, cork grips, bags, markers, tees, counters, gloves, disks, flags, rims, ball racks, driving nets (golf-ball cleaners, golf-ball markers); games of golfette, parachute golf, clock golf, indoor golf, etc.; field and ice hockey sticks, balls, pucks, goals, guards, finger and body protectors, pads, gloves, etc.; Hurley sticks and balls; indoor baseball, such as balls, bats, bases, etc.; lacrosse sticks, balls, goals, gloves, etc.; polo sticks, balls, goal post flags, nets, etc.; sets of quoits and pins, and parts thereof; roque balls, mallets, arches,

and blocks; squash rackets and balls; skis, poles, etc.; snow shoes and sandals; skates, both ice and roller; skate seaboards, etc.; trap-shooting equipment, such as targets, clay pigeons, etc.; toboggans, cushions, and toe caps; tennis rackets, balls, racket covers (rubber grips), sweatbands (back-stop nets and poles), marking plates, tapes, posts, guy ropes and pegs, center straps (standards), presses, bags, nets, markers, etc.; tug-of-war equipment; volley balls, standard covers, nets, etc.; wrestling head harness; tether, tennis equipment and parts thereof, curling stones.

Certain uniforms and articles of clothing used in connection with athletic contests are taxable under the language of section 5, such as baseball uniforms. Under the words "all similar articles commonly or commercially known as sporting goods" would be included football, basketball, ice hockey, and soccer pants as taxable items.

There are other articles used for general wear and for other than athletic purposes which may also be used in connection with athletic pursuits. Such articles are not subject to tax, even though sold by sporting goods dealers. Among such articles not subject to the tax under section 5 may be named the following: Sweaters, jerseys, athletic shirts, stockings, hose, bathing suits, sweat shirts, skull caps, toques, wristlets, knee tights, full tights, trunks, bathing pants, caps when not sold as part of a uniform, and belts. So-called running pants commonly sold and dealt in as underwear are not subject to tax.

There are parts of taxable articles which because they are liable to break or wear out sooner than other parts are frequently sold separately to the consumer. When sold for replacement or repairs, the following articles are not subject to the tax: Plates for baseball shoes, rollers for skates.

CHewing GUM.

[¶ 710] Sec. 900. (6) Chewing gum or substitutes therefor, 3 per centum.

[¶ 711] Art. 19. **Chewing gum.**—The tax is 3 per cent of the price for which chewing gum or any substitute therefor is sold by the manufacturer. Substitutes include any imitation designed to take the place of chewing gum. Where chewing gum is covered with another substance, the tax is on the whole article. Chewing gum with candy coating will be taxable as chewing gum and not as candy. Chewing gum is taxable under section 900 regardless of the fact that it may be advertised or held out as having medicinal properties. It is not taxable under section 907 as a medicinal preparation.

CAMERAS.

[¶ 712] Sec. 900. (7) Cameras, weighing not more than 100 pounds, 10 per centum.

[¶ 713] Art. 20. **Cameras.**—The tax is 10 per cent of the price for which cameras weighing not more than 100 pounds are sold by the manufacturer. Stands and tripods are not to be weighed in computing the weight of the camera. Process and motion-picture cameras are subject to tax. Toy cameras are taxable if capable of taking a picture. Parts of cameras are not taxable, unless sold in combination with a camera.

FILMS.

[¶ 714] Sec. 900. (8) Photographic films and plates, other than moving-picture films, 5 per centum.

[¶ 715] Art. 21. **Photographic films and plates.**—The tax is 5 per cent of the manufacturer's selling price of photographic films and plates, other than moving-picture films. X-ray plates are taxable as photographic plates.

Motion-picture film cut up and placed in packets inclosed in a patented wrapper and known as dental films are taxable under this section. Unsensitized, squeegee, and ferrotype plates are not taxable. Motion-picture films are taxable under section 906. (See Regulations 56.)

CANDY.

[¶ 716] **Sec. 900. (9) Candy, 5 per centum.**

[¶ 717] **Art. 22. Candy.**—Candy within the meaning of this subdivision —(a) Includes chocolate creams, bonbons, gumdrops, jelly drops, jelly beans, imperials, caramels, stick candy, lozenges, taffies, candy kisses, wafers, fudges, or Italian creams, nougats, peanut brittle, squared almonds, chocolate-covered fruits and nuts, glaze or candied fruits and nuts not specified in paragraph (b) of this subdivision; pop corn and other cereals or cereal products not specified in paragraph (b) of this subdivision, mixed with or covered with molasses, sugar, or other sweetening agent; hard candies; plain and chocolate-covered marshmallows; candy cough drops sold in bulk and without remedial claims (see art 16, Regulations 51); sweetened licorice not taxed as cough drops under section 907; sweet chocolate and sweet milk chocolate, whether plain or mixed with fruit or nuts, not specified in paragraph (b) of this subdivision; maple sugar mixed with fruit, nuts, etc., not specified in paragraph (b) of this subdivision; and all similar articles however designated; but

(b) Does not include cereal breakfast foods, cake and pastries, bitter chocolate which needs the addition of sugar before it becomes pleasing to the taste, powdered chocolate, maple sugar or sirup not mixed with nuts, etc., marshmallow paste, glaze or candied fruit peel and citron, or sweet chocolate, glaze or candied fruits and nuts sold by the manufacturer under circumstances where it is obvious from the condition of the product, method of packing or from other facts in connection with the sale, that it will not be consumed in the form in which it is then sold.

Where a manufacturer sells candy which is packed or put up for sale in a fancy or plain box or container the tax is computed upon the selling price of the candy and container, whether the container is billed separately or not. However, where candy is purchased and the purchaser selects a fancy box or container in which the candy is placed the tax attaches to the selling price of the candy and not to the cost of the box. In such cases, if the sale is billed, the container and candy must be billed as separate items.

FIREARMS.

[¶ 718] **Sec. 900. (10) Firearms, shells, and cartridges, except those sold for the use of the United States, any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, or any foreign country while engaged against the German Government in the present war, 10 per centum.**

[¶ 719] **Art. 23. Firearms, shell, and cartridges.**—A firearm is any weapon from which shot is discharged by an explosive. For the purpose of the act, firearms include only portable firearms, as pistols, revolvers, rifles, carbines, machine guns, shotguns, and fowling pieces. Shells and cartridges include projectiles for all such portable arms, when in such completed state that they may be discharged from firearms without further manufacture. After peace with the German Government shall be declared by the United States, the tax shall attach to the sale of all such goods to the United States, any State, Territory, or possession of the United States, or any political subdivision thereof. The tax shall also attach to any of the goods herein mentioned sold to any foreign government which was not or is no longer engaged in the present (or recent) war against the German Government.

KNIVES.

[¶ 720] **Sec. 900.** (11) Hunting and bowie knives, 10 per centum.

(12) Dirk knives, daggers, sword canes, stilettos, and brass or metallic knuckles, 100 per centum.

[¶ 721] **Art. 24. Hunting knives, dirk knives, daggers, etc.**—A hunting or bowie knife is a knife with a blade over 3 inches in length, having a sharp point and one cutting edge, especially adapted for sticking, skinning, and cutting game. The knife may be of a rigid type, carried in a sheath, or it may be of a clasp type, containing devices other than the blades. Hunting and bowie knives are subject to a tax of 10 per cent of the manufacturer's selling price, whereas the weapons described in (12) are subject to a tax of 100 per cent upon the price for which sold by manufacturers.

ELECTRIC FANS.

[¶ 722] **Sec. 900.** (13) Portable electric fans, 5 per centum.

[¶ 723] **Art. 25. Portable electric fans.**—The ordinary movable electric fan, oscillating or nonoscillating, constructed with a heavy base and receiving its current through a flexible cable, so that it can be readily moved from place to place is subject to the tax. So, also, fans of a like type, screwed to a wall, bracket, or other support, but capable of being easily moved, are taxable. Ceiling fans, exhaust fans, and blowers which are permanently attached, and which required separate wires and switches and skilled workmen to install or remove them, are not portable fans within the meaning of the act.

THERMOS BOTTLES.

[¶ 724] **Sec. 900.** (14) Thermos and thermostatic bottles, carafes, jugs, or other theremostatic containers, 5 per centum.

[¶ 725] **Art. 26. Thermostatic containers.** (As amended by T. D. 2852, and T. D. 2997.)—The tax is 5 per cent of the manufacturer's selling price of the enumerated articles. All sales by manufacturers of thermostatic containers are taxable, whether the property of the thermostatic retention is obtained by insulation or by the vacuum principle. Fireless cookers, ovens, stoves, refrigerators and like articles, are not taxable under this section. (T. D. 2997.)

SMOKERS' ARTICLES.

[¶ 726] **Sec. 900.** (15) Cigar or cigarette holders and pipes, composed wholly or in part of meerschaum or amber, humidors, and smoking stands, 10 per centum.

[¶ 727] **Art. 27. Cigar and cigarette holders, pipes, humidors, and smoking stands.**—For the purpose of the tax a humidor means either (1) a device for maintaining moist atmosphere in any receptacle used for holding tobacco products, or (2) a portable receptacle used for holding tobacco products and fitted with a device for maintaining moist atmosphere therein. A smoking stand is (1) a tobacco ash tray, having a pedestal and base, or (2) a stand supporting two or more ash trays in an upright position from a common base and designed to be placed on a table, desk, floor, or other surface. Cigar and cigarette holders and pipes, made wholly or in part of briar or other material, as distinguished from meerschaum, and fitted with a mouthpiece of amber, are taxable under section 900, even though ornamented, mounted, or fitted with precious metals, or imitations thereof, or ivory. Cigar and cigarette holders and pipes with no meerschaum or amber in their composition are not taxable under section 900, but if ornamented, mounted or fitted with precious metals, or imitations thereof, or ivory, are taxable under section 905. (See art. 24, Regulations 48.)

SLOT MACHINES.

[¶ 728] **Sec. 900. (16)** Automatic slot-device vending machines, 5 per centum, and automatic slot-device weighing machines, 10 per centum; if the manufacturer, producer, or importer of any such machine operates it for profit, he shall pay a tax in respect to each such machine put into operation equivalent to 5 per centum of its fair market value in the case of a vending machine, and 10 per centum of its fair market value in the case of a weighing machine.

[¶ 729] **Art. 28. Automatic slot-device machines.**—A machine used for both vending and weighing is taxable as a weighing machine. For the purpose of the tax fair market value is deemed to be the average wholesale price at which like machines have been sold by the manufacturer at wholesale during the month next preceding the month in which such machine is put into operation. In case there has been no prior sale of such machines, fair market value is deemed to be the average wholesale price for which similar machines are sold at the time the taxable machine is put into operation. Automatic machines operated by a hand lever released by dropping a coin are taxable as automatic machines. Also machines that sell receipts redeemable in saving stamp books or Government thrift stamps are taxable.

LIVERIES.

[¶ 730] **Sec. 900. (17)** Liveries and livery boots and hats, 10 per centum.

[¶ 731] **Art. 29. Liveries and livery boots and hats.**—For the purpose of the tax, the enumerated articles include the uniforms of personal or domestic servants or of doormen, footmen, pages, bell boys, and similar employees of clubs, hotels, theatres, cafes, stores, and similar places; but uniforms otherwise taxed, and the uniforms of employees of public-service corporations, such as railroads, telegraph, and telephone companies, are not taxable. Uniforms manufactured for any of the personal or domestic servants mentioned in this article are defined to be such uniforms as are of a description, character or design prescribed by the person in whose service they are worn as an evidence of such service and possess some distinctive characteristic to distinguish them from ordinary dress. A chauffeur's uniform is not taxable as a livery unless it has some distinctive characteristic to distinguish it from civil dress. The following uniforms are not taxable under this section: Uniforms of members of an orchestra (not employed by a hotel or similar place); private watchmen; court attendants; letter carriers; elevator conductors and operators, or other similar employees of a public building; police reserves; Indians in the United States Indian Service; hospital attendants (private and public hospitals); Army and Navy officers and students at military schools; bands and musical organizations (when sold to the organization or to an individual member); actors or participants in any theatrical production; attendants of public zoological parks, museums of art and natural history; officers of steamship companies; chauffeurs of taxicab companies, if such taxicab companies are adjuncts of public service corporations; fraternal organizations (G. A. R., Spanish War Veterans, and the American Alliance); overalls. Hats and caps purchased by any of the persons named in this paragraph may be taxable under section 904, subdivisions (12) and (13) of the Act, although not taxable under section 900. (See articles 24 and 25 of Regulations 54.)

[¶ 732] **Sec. 900. (18)** Hunting and shooting garments and riding habits, 10 per centum.

[¶ 733] **Art. 30. Hunting and shooting garments and riding habits.**—Hunting and shooting garments and riding habits are deemed to include articles primarily adapted for use in hunting, shooting, and riding, and commonly so used, such as hunting coats, sleeveless and other; duck shooter's jackets and

coats; shooting hats and caps; ladies' divided skirts and shell skirts; ladies' riding coats; men's riding breeches and coats; shell coats and riding hats and caps. (See articles 23, 24 and 25, Regulations 54.) Leather puttees and canvas or other leggings are not taxable as hunting or shooting garments or riding habits.

FUR GOODS.

[¶ 734] **Sec. 900. (19)** Articles made of fur on the hide or pelt, or of which any such fur is the component material of chief value, 10 per centum.

[¶ 735] **Art. 31. Fur goods.**—As used in these regulations the term "fur article" includes articles made of fur on the hide or pelt or of which any such fur is the component material of chief value and all such articles as are commercially known and sold as fur articles. Raw, dressed, and dyed skins are not subject to the tax when sold to a manufacturer for use in the manufacture of fur articles. Such skins, however, are subject to the tax when sold to a consumer. The tax is not confined to articles of wearing apparel. For example, fur rugs and fur robes are subject to the tax. The "component material of chief value" of any article is that component material which is not exceeded in value by any other single component material. The value of each component material shall be determined by the cost thereof to the manufacturer. The cost of production is no part of the value of any other single component material. Thus, where a fur-trimmed coat was composed of cloth costing \$10, lining \$5, findings, including buttons and braid, \$3, and fur trimmings costing \$15, the fur trimmings exceed in value any other single material and are the component material of chief value. The actual price charged for the fur is the basis for arriving at its value. The tax attaches to each sale of a fur article by the manufacturer. The provisions for credit for taxes already paid contained in article 6 will apply where taxes have been paid in respect of any sale and the article so sold is subjected to a further process of manufacture and again sold.

When a manufacturer sells an article made of fur (in which fur is the component material of chief value) that is not entirely finished and ready to wear to another manufacturer who completes and sells the article in its finished state, the first manufacturer is liable to tax upon the basis of his selling price to the second manufacturer. The second manufacturer is also liable to tax upon the selling price of the finished garments (in which fur is the component material of chief value) though he is entitled to a credit for any tax which he has reimbursed to the first manufacturer upon the fur articles sold by him. (See arts. 3 and 6.) Thus a manufacturer of fur collars and cuffs and unfinished fur trimmings is liable to tax under section 900 upon the selling price of such article. A manufacturer of a cloak or suit who sews any of the above fur articles to a garment, if such collar, cuffs and trimmings are the component material of chief value, is also liable to tax upon the selling price of the entire garment. He is entitled to a credit for any tax which he has reimbursed to the first manufacturer upon any article forming a component part of the article sold by him and in respect to which a tax is paid by him. (See arts. 3 and 6.)

Ordinary repairs are not taxable, but when new fur is added the tax attaches to such fur, and the price for the job will be presumed to be the price for which such fur is sold unless it is billed as a separate item, in which case the tax attaches to the value properly ascribable to the fur in its manufactured form. New fur is fur that is not part of the garment repaired nor fur finished by the owner of the garment, but is any added by the dealer whether previously used in another garment or purchased unused from a manufacturer. Articles made of shearling or domestic sheepskin of a domestic kind are not taxable under subdivision (19) of section 900 of the Revenue Act of 1918, as they are not commercially known and sold as fur articles or articles made of fur.

PLEASURE BOATS.

[¶ 736] **Sec. 900. (20)** Yachts and motor boats not designed for trade, fishing, or national defense; and pleasure boats and pleasure canoes if sold for more than \$15, 10 per centum; and

[¶ 737] **Art. 32. Yachts and motor boats.**—Yachts and motor boats include vessels driven by steam, sail or motor and not designed for trade, fishing, or national defense. Vessels adapted to the public transportation of persons or property, or both, or for the carrying on of a commercial enterprise, are designed for trade. Thus, excursion steamers, freighters, pilot boats, lighters, and the like are designed for trade. To be classed as designed for fishing a vessel must be adapted to commercial fishing carried on as a means of livelihood. Vessels built according to plans and specifications previously approved by the Navy Department are held to be designed for national defense, and are not taxable. The sale of vessels constructed according to a design adapted to racing, to the personal comfort or convenience of the owner, or to official use other than in national defense, is taxable as the sale of a yacht or motor boat not designed for trade, fishing, or national defense.

Pleasure boats include small open boats driven by oars, paddles, sails, or motors, not capable of long trips, when adapted for pleasure or recreation of the owner or lessee. The sale thereof is taxable if the selling price is greater than \$15.

TOILET SOAPS.

[¶ 738] **Sec. 900. (21)** Toilet soaps and toilet soap powders, 3 per centum.

[¶ 739] **Art. 33. Toilet soaps and toilet-soap powders.**—Toilet soap is taxable whether in the form of a liquid, semiliquid, paste, flake, powder, or cake. Soaps and soap powders advertised or held out as suitable for toilet purposes or for application to the body, or parts of the body, as cleansing agents, are taxable. Toilet soaps advertised or held out as having medicinal properties, medicated toilet soaps, shaving soaps, creams and powders, and shampoo soaps and soap powders are taxable under section 900. A soap used chiefly for removing grease and stains from the hands, though capable of incidental use for cleaning pots and pans, is taxable as a toilet soap. Soaps which are made, advertised, held out, and sold primarily for general cleaning or laundry purposes, but which may have an incidental and trivial use as a toilet soap, are not taxable unless advertised or held out as suitable for toilet purposes. Shampoo oils and liquids not containing saponaceous matter are taxable under section 907 as toilet preparations.

MANUFACTURER ALSO RETAILER.

[¶ 740] **Sec. 900. (21)** If any manufacturer, producer, or importer of any of the articles enumerated in this section customarily sells such articles both at wholesale and at retail, the tax in the case of any article sold by him at retail shall be computed on the price for which like articles are sold by him at wholesale.

[¶ 741] **Art. 34. Manufacturer also retailer.**—By “customarily sells” is meant a bona fide practice of selling the same article at both wholesale and retail, in substantial quantities, and not mere occasional sales at wholesale, with the bulk of the business done at retail. Only a manufacturer who does both a wholesale and retail business and holds himself out as a wholesaler as well as a retailer with respect to the goods sold will be entitled to compute the tax upon goods sold at retail on the price for which like articles are sold by him at wholesale. It should be noted that the provision of the law is that the tax in respect to retail sales shall be computed “on the price for which like articles are sold” at wholesale. To take advantage of this provision, therefore, it is necessary that a manufacturer shall have sold identical articles both at

wholesale and at retail, in order to arrive at a basis for computing the tax.

In arriving at the basis of tax on retail sales, if a manufacturer has but one regular wholesale selling price or rate of discount from list, the basis of tax on all sales, whether wholesale or retail, is the same—that is, his regular wholesale selling price.

If a manufacturer sells regularly at wholesale at two or more rates of discount, it will be necessary for him to arrive at his average wholesale selling price to determine the basis of tax on retail sales; and this must be done by dividing the sum of the actual wholesale selling prices of the article in question by the total number of such articles so sold, and not by the process of “averaging discounts.”

Except as provided herein, the basis of tax on retail sales for any given calendar month shall be the manufacturer's actual average wholesale selling price for the same month. But if the manufacturer desires to pass the tax on as such and to bill his customer a definite amount as tax previous to the determination of his actual average wholesale selling price for that month, he may base the tax on his average wholesale selling price for the second calendar month preceding that in which such retail sale is made, provided no change has been made in the meantime in his retail list price; if his retail list price has been changed, the average wholesale price determined as aforesaid must be adjusted accordingly, so that the amount upon which the tax is based will bear the same proportion to the retail list price then in force as the average wholesale price for the second preceding month bears to the retail list price then in force.

For example, the tax on retail sales made in June may be based on the manufacturer's average wholesale selling price for the same article during the month of April, provided he has made no change in his retail list price of the article. If in April his retail list was \$15 and his average wholesale price was \$10, and in June his retail list price had been increased 20 per centum, to \$18, the average wholesale price or basis of tax would be likewise increased 20 per centum, to \$12.

For the purpose of the tax, a wholesale sale is held to be a sale to a vendor for resale, or a sale to a consumer or user in wholesale quantity as distinguished from a sale to a consumer or user at a wholesale price. All sales at wholesale are subject to tax on the basis of the actual selling price of each article sold. (See art. 3.)

REPEAL OF FORMER TAXES.

[§ 742] **Sec. 900.** (21) The taxes imposed by this section shall, in the case of any article in respect to which a corresponding tax is imposed by section 600 of the Revenue Act of 1917, be in lieu of such tax.

[§ 743] **Art. 35. Repeal of former taxes.**—The present taxes supersede the excise taxes imposed by the Revenue Act of 1917 upon the sale of automobiles, musical instruments, sporting goods, chewing gum, cameras, toilet soaps and similar articles. The Revenue Act of 1917 remains in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes. In the case of any tax imposed by the Revenue Act of 1917, if there is a tax imposed by the present statute in lieu thereof, the provision imposing such tax remains in force until the corresponding tax under the present statute takes effect. See section 1400 of the statute.

COLORABLE SALES.

[¶ 744] **Sec. 901.** That if any person manufactures, produces or imports any article enumerated in section 900, or leases or licenses for exhibition any positive motion-picture film containing a picture ready for projection, and, whether through any agreement, arrangement, or understanding, or otherwise, sells, leases or licenses such article at less than the fair market price obtainable therefor, either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (b) with intent to cause such benefit, the amount for which such article is sold, leased or licensed shall be taken to be the amount which would have been received from the sale, lease or license of such article if sold, leased or licensed at the fair market price.

[¶ 745] **Art. 36. Colorable sales.**—If a manufacturer, through the device of a selling branch or in any other manner, contrives to sell under the market price, with the result of benefiting his business or with the intent to cause such benefit, the tax shall be based on the fair market value of the articles and not on their nominal selling price. See article 8.

RETURN AND PAYMENT OF TAX.

[¶ 746] **Sec. 903.** That every person liable for any tax imposed by section 900, 902, or 906, shall make monthly returns under oath in duplicate and pay the taxes imposed by such sections to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 747] **Art. 37. Return and payment of tax.**—Each manufacturer of any of the articles hereinabove enumerated must make monthly returns under oath in duplicate on Form 728 (revised) and pay the taxes imposed on such articles to the collector of internal revenue for the district in which his principal place of business is located. Any return may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath. Instructions for preparing will be found on the back of the form. The returns must be rendered and the tax paid on or before the last day of each month covering all the transactions of the preceding month, the first return to cover all transactions after February 24, 1919. Branch houses should in general make reports to the parent house, which is liable to make monthly returns of the sales of the branch house. An itinerant manufacturer should make return and pay the tax to the collector of the district where the sales were made. The books of every person liable to the tax shall be open at all times for inspection by examining internal revenue officers. As to penalties, see article 40. The person responsible for the return and payment of the tax shall, in order that returns may be readily checked and verified by examining internal revenue officers, keep such records and memoranda as will clearly show the amounts of the sales of taxable articles for each month.

TRADE WITH POSSESSIONS OF UNITED STATES.

[¶ 748] **Sec. 1304.** That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of such islands: Provided, That there shall be levied, collected, and paid in such islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in such islands upon like articles there manufactured; and such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States.

[¶ 749] Art. 38. **Trade with possessions of United States.**—A sale which results in the shipment of articles into the United States from the Virgin Islands is taxable to the same extent as a sale of articles within the United States. Articles going into the Virgin Islands from the United States are free from tax in the United States. The same rules apply to trade with Porto Rico and the Philippine Islands. See section 1000 of the Revenue Act of 1917 and section V of the Act of August 4, 1909, as amended by section IV, subdivision C, of the Act of October 3, 1913. The tax attaches, however, to articles shipped to other possessions of the United States, including the Canal Zone.

EXTENSION OF EXISTING STATUTES.

[¶ 750] Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 751] Art. 39. **Aids to collection of tax.**—In collecting the excise taxes the Commissioner has the benefit of all existing internal revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed.

RECORD OF SALES.

[¶ 752] **Sales records of articles taxable under Sections 628, 900, 902 and 905 (T. D. 2860).**—This Treasury Decision provides that: "In all cases of sales of articles taxable under the provisions of sections 628, 900, 902, and 905 of the Revenue Act of 1918, the person responsible for the return and payment of the tax shall, in order that the returns may be readily checked and verified by examining internal revenue officers, keep such records and memoranda as will clearly show the amounts of the sales of taxable articles for each month. The tax may be computed upon the gross amount of the taxable sales during the month for which return is made."

PENALTIES.

[¶ 753] Sec. 1308. (a) That any person required under Titles V, VI, VII, VIII, IX, X, or XII, to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or of sections 605 or 620 of this Act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 754] Art. 40. **Penalties.**—Any manufacturer who fails to file a return within the time prescribed is liable under section 3176 to a penalty of 25 per cent of the amount of the tax, unless it is shown that the failure to file it was due to a reasonable cause and not to willful neglect.

Any manufacturer who willfully files a false or fraudulent return is liable under section 3176 to a penalty of 50 per cent of the amount of the tax.

Any manufacturer who fails to pay a tax when due is liable under section 903 to a penalty of 5 per cent of the amount of the tax, together with interest at the rate of 1 per cent per month. (See art. 37.)

In addition to the above, under certain circumstances the penalties provided under section 1308 may also be imposed on any such manufacturer and also on the officer, partner, or employee whose duty it was to perform the duties in respect of which the violation occurred. (See also sec. 1312 (4) and art. 47.)

[¶ 755] Sec. 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

CREDITS AND REFUNDS.

[¶ 756] Sec. 1310. (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

(b) Wherever in this Act a tax is required to be paid by the purchaser to the vendor at the time of a sale, and such sale is made on credit, then, under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax may, at

the option of the vendor, be returned and paid by him to the United States as if paid to him by the purchaser at the time of the sale, and in such case the vendor shall have a right of action in any court of competent jurisdiction against the purchaser for the amount of the tax so returned and paid to the United States. * * *

[¶ 757] Art. 41. **Credits and refunds.**—If a manufacturer overpays the tax due with one monthly return, or if, under section 1312 of the statute, he overcollects the tax, he may take credit for the overpayment or overcollection against the tax due with a succeeding return. If he overcollects the tax, he shall upon proper application refund the overcollection to the person entitled thereto, even though such amount has already been paid over to the collector of internal revenue and no corresponding credit has yet been secured. In case a credit is claimed, a statement shall be attached to the return setting forth fully the facts regarding alleged overpayment or overcollection. In the case of the overcollection of a tax, no credit for the amount overcollected shall be allowed until the manufacturer making the overcollection submits a sworn statement showing that the tax in each case so overcollected has been returned to the person making the overpayment, that no claim for a refund of any part of such amount has been filed with the collector or commissioner on behalf of any person who paid such amounts, and a complete list of such persons. It should be noted that a credit may be taken under section 1310 (a) only in the case of overpayment or overcollection as distinguished from an illegal or erroneous payment or collection.

In all cases where a tax has been collected or paid and such collection or payment is alleged to be illegal or erroneous, it will be necessary for the person so paying the tax to file claim for refund on Treasury Department Form 46 [page 1609]. For procedure with reference to claims for refund, see sections 3220 and 3225 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, and Regulations 14 (revised).

NOTE: T. D. 2991, approved March 13, 1920, contains instructions to collectors as to claims for refund or abatement of sales taxes and penalties on Form 751 and Blanket Form No. 47.

EXPORTS.

[¶ 758] (c) Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed under the provisions of Titles VI, VII, or IX shall not apply in respect to articles sold or leased for export and in due course so exported. Under such rules and regulations the amount of any internal-revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

[¶ 759] Art. 42. **Sales for export.**—The tax does not attach to the sale of an article which is sold for export by the manufacturer, and in due course so exported.

An article may be sold for export but never exported, or not exported in due course. Also, an article may be exported in due course by the purchaser, although not sold for export.

In order to be exempt from tax, however, it is necessary that the article be both sold for export by the manufacturer and in due course so exported.

An article will be regarded as having been sold for export if the manufacturer has in his possession at the time that title passes or of shipment (whichever is prior) (a) an order or contract of sale or document incidental thereto showing in writing that the manufacturer is to ship the article direct to a foreign destination; or (b) where delivery is to be made to the purchaser or his agent within the United States, a certificate from such purchaser or agent, as the case may be showing (1) that the article is purchased either to fill a firm order then held by such purchaser requiring shipment to a foreign

destination, or for shipment (or transportation) by him in due course to himself or to his agent in a foreign country, or that the article is purchased to fill future orders calling for shipment thereof by the purchaser direct to a foreign destination, the purchaser having no domestic business in that particular class of articles, and (2) that the article will be transported to a foreign destination in due course prior to use, resale, or further manufacture within the United States.

In these cases the manufacturer, for a period of six months from the date when title passes or of shipment (whichever is prior), is excused from filing returns for the articles so sold. This temporary exemption becomes permanent upon the manufacturer's attaching to such order, contract, or certificate before the expiration of such period of six months due proof of exportation (see art. 43). On the other hand, if within such period of six months the manufacturer has not received and attached to such order or contract such "proof of exportation," then the temporary exemption ceases and the manufacturer shall include a tax on the sale of such article in his return for the month in which such period of six months expires. The order or contract of sale and certificate and the "proof of exportation" must be preserved by the manufacturer in such a way as to be readily accessible for inspection by internal-revenue officers. No sale shall be considered to be exempt from tax under section 1310 (c) of the Act, unless its character as an export sale has been established in accordance with the above provisions.

[§ 760] **Art. 43. Proof of exportation.**—By the term "proof of exportation" is meant an affidavit of the exporter (who, if not the manufacturer, must be the purchaser from the manufacturer or an agent of one or the other) containing the following information: (1) The name and address of manufacturer; (2) the name and address of the exporter; (3) whether exporter is acting in his own behalf or as agent, and if agent, name of principal; (4) a brief description of the article; (5) the date upon which the article was delivered to a carrier for transportation beyond the limits of the United States (or if not transported by carrier the actual date and manner of transportation out of the United States); (6) the name of carrier issuing export bill of lading, and if a carrier by sea, the name of vessel carrying the article and date of departure from United States; (7) destination of article; (8) statement that the article has been received by foreign consignee, approximate date of receipt, and brief reference to the source of exporter's information; (9) statement that the article was in fact exported in due course prior to use, resale, or further manufacture within the United States.

Where the manufacturer is the exporter there may be attached to the original contract or order as proof of exportation, in lieu of the affidavit provided for in the preceding paragraph, (1) a copy of export bill of lading, or (2) a certificate by the agent or representative of the export carrier showing exportation of the article, or (3) certificate of mailing, where the article was shipped by parcel post. Where the exportation is accomplished by a person other than the manufacturer, the exporter must carefully preserve in his own files a copy of export bill of lading or other shipping document and all other papers bearing on the transaction, readily accessible for inspection by any authorized official of the United States.

Where the exportation is accomplished by a person other than the manufacturer, the affidavit above required may cover all the articles received from the manufacturer upon any one contract or shipment, whether exported on different dates or shipped to different consignees.

In any case where the manufacturer does not have in his possession, within the six months' period, proof of exportation as outlined herein, the

manufacturer must pay the tax. Whenever proper proof of exportation is available, claim for refund of the amounts so paid may be filed.

TRANSFER OF BURDEN OF TAX.

[§ 761] **Sec. 1312.** (1) That (a) if any person has prior to May 9, 1917, made a bona fide contract with a dealer for the sale or lease, after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, VII, or IX, or under subdivision 13 of Schedule A of Title XI, or under this subdivision, and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such tax as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, the tax collected under this Act shall be the tax in force on May 9, 1917.

(2) If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale or lease, after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, VII, or IX, or under subdivision 13 of Schedule A of Title XI, or under this subdivision, and in respect to which no corresponding tax was imposed by the Revenue Act of 1917, and (b) such contract does not permit the adding, to the amount to be paid under such contract, of the whole of the tax imposed by this Act, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of the tax imposed by this Act as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, no tax shall be collected under this act.

(3) If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale or lease, after the tax takes effect, of any article in respect to which a tax is imposed under Title VI, VII, or IX, or under subdivision 13 of Schedule A of Title XI, or under this subdivision, and in respect to which a corresponding tax was imposed by the Revenue Act of 1917, and (b) such contract does not permit the adding to the amount to be paid under such contract, of the whole of the difference between such tax and the corresponding tax imposed by the Revenue Act of 1917, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such difference as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, the tax collected under this Act shall be the tax in force on September 3, 1918.

(4) The taxes payable by the vendee or lessee under this section shall be paid to the vendor or lessor at the time the sale or lease is consummated, and collected, returned, and paid to the United States by such vendor or lessor in the same manner as provided in section 502.

(5) The term "dealer" as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale.

(6) This section shall not apply to any tax imposed by section 906.

[§ 762] **Art. 44. Contract of sale before May 9, 1917.**—If before May 9, 1917, A, a manufacturer, made with B, a wholesaler, a contract of sale which does not permit the addition of the tax to the amount payable under the contract, then the liability for the tax is on B, with the duty on A only to collect and pay it to the collector as provided in article 47. If B also made before May 9, 1917, a contract of the character described with C, a retailer, the liability for the tax thus imposed on B is transferred from B to C, B being obliged only to collect the tax from C and to pay it over to A for payment to the collector. If, however, any person before May 9, 1917, made a contract of the character described with any person other than a dealer as defined in article 48, no tax is payable in respect of the sale by him, since on May 9, 1917, no tax was in force on the sale of any of the articles described in these regulations.

[§ 763] **Art. 45. Contract of sale before September 3, 1918, of article not then taxable.**—If before September 3, 1918, A, a manufacturer of candy or other article not taxable under the Revenue Act of 1917, made with B, a wholesaler, a contract which does not permit the addition of the tax to the amount payable under the contract, then the liability for the tax is on B, with the duty on A only to collect and pay it to the collector as provided in article 47. If B also made before September 3, 1918, a contract of the character described with

C, a retailer, the liability for the tax thus imposed on B is transferred from B to C, B being obliged only to collect the tax from C and to pay it over to A for payment to the collector. If, however, any person before September 3, 1918, made a contract of the character described for the sale of candy with any person other than a dealer as defined in article 48, no tax is payable in respect of such sale by him.

[§ 764] Art. 46. **Contract of sale before September 3, 1918, of article then taxable.**—If before September 3, 1918, A, a manufacturer of chewing gum or other article taxable under the Revenue Act of 1917, made with B, a wholesaler, a contract which does not permit the addition to the amount payable under the contract of the difference between the present tax and the corresponding tax imposed by the Revenue Act of 1917, then B is liable for such difference. A must collect and pay to the collector as provided in article 47 the portion of the tax for which B is so liable, and he must also include in his return and pay the portion of the tax for which B is not so liable. If B also made before September 3, 1918, a contract of the character described with C, a retailer, the liability for the tax thus imposed on B is transferred from B to C, who is liable for the difference between the tax imposed by the present statute and the tax imposed by the Revenue Act of 1917. B must collect and pay over to A for payment to the collector the portion of the tax for which C is so liable. For example, if any person made before September 3, 1918, a contract of the character described for the sale of chewing gum with any person other than a dealer as defined in article 48, the tax to be collected under the present statute will be the tax in force on September 3, 1918; that is, the tax under the Revenue Act of 1917.

[§ 765] Art. 47. **Return of tax.**—Each person receiving any payments referred to in section 1312 of the statute shall collect the amount of the tax, if any, imposed by such section from the person making such payments, and shall make monthly returns under oath in duplicate and pay the taxes so collected to the collector of the district in which his principal office or place of business is located. If sale is made on credit, other than on conditional sale, the manufacturer shall return the tax at the time of sale, but may defer collection thereof from the purchaser. Any person making a refund of any payment upon which the tax is so collected may repay therewith the amount of the tax collected on such payment; and the amount so repaid may be credited against amounts included in any subsequent monthly return. The return must be made on Form 728 (revised) in time to be in the office of the collector or some deputy, on or before the last day of the month following the month in which the sale is made, as provided in article 37. The tax shall without assessment by the Commissioner or notice from the collector be due and payable to the collector at the time fixed for filing the return. If the tax is not paid when due, there shall be added as a part of the tax a penalty of 5 per cent, together with interest at the rate of 1 per cent for each full month from the time when the tax became due.

[§ 766] Art. 48. **Meaning of "dealer."**—The term "dealer" includes not only dealers in the ordinary sense—that is, persons engaged in the business of selling articles—but also a person who purchases an article with the intention of using it in the manufacture or production of any article intended for sale. The term does not include a person buying an article for his personal consumption or use. The United States, a State, Territory, or a political subdivision thereof, or a foreign government, purchasing an article for its own use is not a dealer.

FRACTIONAL PART OF CENT.

[§ 767] **Sec. 1313.** That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

[§ 768] **Art. 49. When fractional part of cent may be disregarded.**—In the payment of taxes, and in each step or computation necessary in determining the amount of the tax, a fractional part of a cent may be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

MEDIUM OF PAYMENT OF TAX.

[§ 769] **Sec. 1314.** That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[§ 770] **Art. 50. Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of excise taxes, provided such checks are collectible at par; that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instrument included in the same remittance; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

[§ 771] **Art. 51. Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the Act of March 2, 1911.

MISREPRESENTATION OF TAX.

[§ 772] **Sec. 1319.** That whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

[¶ 773] Art. 52. **Misrepresentation of tax.**—If a manufacturer or other vendor misrepresents the tax, he is guilty of a misdemeanor and is liable to a fine of \$1,000 and to imprisonment for a year. This provision is designed, among other things, to prevent a vendor adding more than the amount of the tax to the price of an article and representing that the increase is due to the tax.

AUTHORITY FOR REGULATIONS.

[¶ 774] Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

[¶ 775] Art. 53. **Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

Approved December 27, 1920.

PAUL F. MYERS,
Commissioner of Internal Revenue.

[Released for publication January, 1921.]

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EXCISE TAXES

ON

WORKS OF ART AND JEWELRY

SECTIONS 902 AND 905, TITLE IX, OF THE
REVENUE ACT OF 1918

Law,
Regulations No. 48, and
Treasury Decisions

Indexed

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LAW,
REGULATIONS No. 48 AND TREASURY DECISIONS
RELATING TO
EXCISE TAXES ON

WORKS OF ART AND JEWELRY
GENERAL PROVISIONS.

[¶ 776] **Article 1. Basis of tax.**—The tax is measured by the price for which the article is sold. It is on the actual sales price of the goods, and not on the list price, where that differs from the sales price. If the price of a taxable article is increased to cover the tax, the tax is on such increased price. Where, however, the tax is billed as a separate item, such amount need not be included in the price of the article in computing the tax. The tax is payable in respect to a sale made whether or not the purchase price is actually collected. A discount for cash or other discount made subsequently to the sale can not be deducted in computing the price for the purpose of the tax. Where, however, articles are sold over a period of time under an agreement for a quantity rebate, the tax, if originally computed on the gross price, may be adjusted in the return for the month in which the price is finally determined. Commissions to agents and other expenses of sale are not deductible from the price. If articles are sold and the delivery charges to point of delivery are paid by the purchaser as a specific item, or if they are sold delivered at a sum less delivery charges to be paid by the purchaser, such charges need not be included as a part of the price of the goods; but if the vendor sells goods at a delivered price and pays the delivery charges, he is not entitled to make any deduction on account of the inclusion in the price of such charges.

[¶ 777] **Art. 2. Rescission of sales.**—If articles sold are returned and the sale entirely rescinded, no tax is payable, and if paid it may be credited against the tax included in a subsequent monthly return. See Art. 35. If part only of articles sold at one time is returned, and credit or rebate allowed by the vendor therefor, the portion of the tax to be credited will be only the proportion of the total tax paid which the amount allowed as credit or rebate bears to the total sale price of all the articles. If an article is sold and thereafter exchanged for another article of a higher price, the purchaser paying the difference, the vendor should pay the tax on the second sale, but may take as a credit against such tax the proportion of the tax paid on the returned article which the amount allowed as a credit for the return of such article on the second sale bears to the amount of the purchase price in the case of the first sale.

[¶ 778] **Art. 3 (as amended by T. D. 2893). Tax payable by vendor.**—The tax is to be paid by the vendor on all sales made direct by him or through an agent, whether a sales agent, broker, or auctioneer. In the case of articles taxable under section 905, where an article is consigned to a dealer the taxable sale is that made by the consignee provided the article is sold for consumption or use.

[¶ 779] **Art. 4 (as amended by T. D. 3065). When tax attaches.**—The tax attaches when the article is sold; that is to say, when the title to it passes from the vendor to the purchaser. When title passes is a question of fact, dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. Where goods are segregated from other goods owned by the vendor and it is the intention of both the vendor and the purchaser at the time the goods are segregated that they shall then belong to the purchaser, the title will be presumed to pass at such time. In the ab-

sence of any intention to the contrary the title is presumed to pass upon delivery of the article to the purchaser or to a carrier for the purchaser. In the case of a conditional sale, where the title is reserved until payment of the purchase price in full, the tax attaches (a) upon such payment, or (b) when title passes if before completion of the payments, or (c) when, before completion of the payments, the dealer disposes of the sale by charging off by any method of accounting he may adopt, the unpaid portion of the contract price, or (d) when the vendor discounts the note of the purchaser for cash or otherwise, or (e) when the vendor transfers his title in the article sold to another.

[§ 780] Art. 5 (as amended by T. D. 2897). **Giving of premiums.**—The giving of so-called “premiums” in return for wrappers, labels, coupons, trading stamps, or other scrip, delivered or sold in connection with the sale of a commodity, is a sale within the meaning of section 902 and section 905 if the premium is within the class of articles enumerated in those section. In such cases the tax attaches at the time title in the property passes to the person receiving it in exchange for such scrip, and is to be computed on the fair market value of the premium at such time. No tax attaches to the gift of an article which if sold would be taxable. Premiums given in return for wrappers, labels, coupons, trading stamps, or other scrip are not considered gifts.

[§ 781] Art. 6 (as amended by T. D. 2897). **Sale to the United States or a State.**—The tax applies to articles enumerated in sections 902 and 905 when sold to the United States. Such articles are also subject to tax when sold to a State or political subdivision thereof for use in carrying on its governmental operations.

WORKS OF ART.

[§ 782] Sec. 902. That there shall be levied, assessed, collected, and paid upon sculpture, paintings, statuary, art porcelains, and bronzes, sold by any person other than the artist, a tax equivalent to 10 per centum of the price for which so sold. This section shall not apply to the sale of any such article to an educational institution or public art museum.

[§ 783] Art. 7. **Effective date.**—The tax applies to all sales made on or after February 25, 1919.

[§ 784] Art. 8. **Taxable sales.**—The tax is on any sale of the articles enumerated other than a sale by the actual artist or to an educational institution or public art museum. The tax attaches whether the sale is made directly or through an agent. If made through an agent the tax is payable by the owner, but the agent may make return and pay the tax for the owner. A receiver conducting a business under court order is liable to the tax upon articles sold by him. When a person other than the artist consigns articles, retaining ownership in them until they are disposed of by the consignee, such person must pay the tax upon all such goods sold by the consignee.

[§ 785] Art. 9. **Taxable sales: Examples.**—The tax applies to all sales from private owner to private owner, or from private owner to dealer, or from dealer to dealer, or from dealer to private owner, and the tax to be paid upon each such sale is to be reckoned upon the full amount of the price for which the article was sold. For example, a picture is sold by a private owner to a dealer for \$10,000; the private owner must pay a tax of 10 per cent of \$10,000, or \$1,000. This picture is thereafter sold to another dealer for \$15,000; the first dealer must pay a tax of 10 per cent of \$15,000, or \$1,500. The second dealer in turn sells the picture to a third dealer for \$20,000; the second dealer must pay a tax of 10 per cent on \$20,000, or \$2,000. The third dealer sells the painting to a private collector for \$25,000; the third dealer must pay a tax of 10 per cent of \$25,000, or \$2,500. Lastly, the private owner sells it to

another private owner for \$30,000; the former must pay a tax of 10 per cent of \$30,000, or \$3,000.

[¶ 786] Art. 10. **Sales by the artist.**—Sales by the artist are not taxable. By “artist” is meant the individual who, by his own hands, completely or as to the important part so far as the article’s artistic merit is concerned, produces the article. The artist’s sale may be made directly or through a dealer, commission merchant, or other person. The exempt sale is only the original sale by the artist. If the artist regains title to an article and again sells it, such sale is taxable.

Sculpture.

[¶ 787] Art. 11. **Articles taxed: Sculpture.**—The term “sculpture” means any production (whether antique or modern, and whether original, replica, copy, or reproduction) which is cut or carved by hand from marble, stone, alabaster, agate, crystal, jade, lapis lazuli, or other semiprecious stone, terra cotta, ivory, bone, wood, clay, wax, metal, or any other substance, and which is of such a character that the use to which under general custom or ordinary usage it should be put (irrespective of the use to which the purchaser intends to put it), is entirely or principally an ornamental or decorative one as distinguished from a useful or utilitarian one. The following list, not intended to be exhaustive, is given to show the class of articles embraced within this definition, viz: Statues, statuettes, figures, figurines, groups, busts, haut or bas reliefs, plaques, pedestals, vases, flower bowls or holders, jardinières, brackets, fountains, sundials, book ends, paper weights, cabinet pieces or curios, and the numerous articles included within the term bric-a-brac, when such articles are cut or carved by hand. The term “sculpture” shall not be understood to include (a) such articles as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, or (b) cut glassware or engravings on metal, wood, shell, stone, or other substance, or (c) furniture, altars, candlesticks, chandeliers, railings, gates, doors, or other articles designed primarily for a useful purpose.

Paintings.

[¶ 788] Art. 12. **Articles taxed: Paintings.**—The term “paintings” means any pictures, images, likenesses, scenes, designs, or sketches, wholly or in part in oil, mineral, water, or other colors on canvas or other textile, wood, paper, metal, plaster, or other material’ (a) whether antique or modern, (b) whether originals, replicas, copies, or reproductions, and (c) whether or not intended for reproduction by printing or other processes. The term “paintings” shall not be understood to include (1) such as are in the nature of work or labor furnished in connection with the erection or construction of a building and which form an integral part thereof; (2) furniture, windows, tableware, toilet articles, glove, handkerchief, candy, or other fancy boxes, menu, place, greeting, and similar cards, stationery, candlesticks, signs, placards, desk fittings, and other articles of utility when the same are ornamented or decorated with oil, mineral, water, or other colors; (3) such as are produced wholly or in part by stenciling, printing, or other mechanical process; and (4) pastels or drawings. The term “drawings” as used in this article shall include only pictures, images, likenesses, scenes, designs, or sketches produced by means of lines.

Statuary.

[¶ 789] Art. 13. **Articles taxed: Statuary.**—The term “statuary” means any production (whether antique or modern and whether original, replica, copy, or reproduction) cut, carved, or otherwise wrought by hand from marble, stone, alabaster, agate, crystal, jade, lapis lazuli, or other semiprecious stone,

terra cotta, ivory, bone, wood, clay, wax, metal, or other substance, when such production is a representation in the round of the human or animal form (irrespective of size), whether real, mythical, fabulous, or allegorical. The term "statuary" shall not be understood to include (a) such productions as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, (b) dolls or toys, or (c) such productions as are designed for a primarily useful purpose.

Art Porcelains.

[¶ 790] Art. 14 (as amended by T. D. 2945). **Articles taxed: Art porcelains.**—The term "art porcelains" means that class of articles covered by sculpture and statuary as defined in articles 11 and 13 by whatever process made when such articles are made wholly or in chief value (a) of any ceramic production of translucent ware, or hard or soft paste, whether vitrified or semivitrified, by whatever name known; or (b) of that which is commonly or commercially known as porcelain, in either case, whether or not decorated, colored, or ornamented, whether modern or antique and whether originals, replicas, copies, or reproductions, which are of such a character that the use to which under general custom or ordinary usage they should be put (irrespective of the use to which the purchaser intends to put them) is entirely or principally an ornamental or decorative one as distinguished from a useful or utilitarian one. The term "art porcelains" shall not be understood to include (a) such articles as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, or (b) tableware or other articles designed for a primarily useful purpose, or (c) such articles as are duplicated by the manufacturer in commercial quantity wholly or chiefly by the ordinary mechanical processes of manufacture. Articles shall not be deemed to be duplicated in commercial quantity if they are ordinarily sold by the manufacturer in quantities of less than a dozen.

Bronzes.

[¶ 791] Art. 15. **Articles taxed: Bronzes.**—The term "bronzes" means that class of articles covered by "sculpture" and "statuary" as defined in articles 11 and 13 by whatever process made, when such articles are made wholly or in chief value of that substance which is commonly or commercially known as bronze, whether such articles are modern or antique, and whether originals, replicas, copies, or reproductions, which are of such a character that the use to which under general custom or ordinary usage they should be put (irrespective of the use to which the purchaser intends to put them) is entirely or principally an ornamental or decorative one as distinguished from a useful or utilitarian one. The term "bronzes" shall not be understood to include (a) architectural bronzes, (b) such articles as are in the nature of material, work, or labor furnished in connection with the erection or construction of a building and which form an integral part thereof, (c) medals, memorial or commemorative tablets, or (d) such articles as are designed for a primarily useful purpose. The sale to an artist by a foundry of a casting made from the artist's model is not subject to the tax.

Frames.

[¶ 792] Art. 16. **Articles taxed: Frames.**—If a taxable article is sold in a frame, the tax attaches to the price for which both the article and the frame are sold. If, however, the article is sold without the frame, the tax applies only to the price at which the article itself is sold. The frame, however, if sold separately, may be taxable under section 904 or section 905 of the Revenue Act of 1918.

JEWELRY.

[¶ 793] **Sec. 905.** That on and after April 1, 1919, there shall be levied, assessed, collected, and paid (in lieu of the tax imposed by subdivision (e) of section 600 of the Revenue Act of 1917) upon all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious stones, and imitations thereof; articles made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof or ivory (not including surgical instruments); watches; clocks; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars; upon any of the above when sold by or for a dealer or his estate for consumption or use, a tax equivalent to 5 per centum of the price for which so sold.

[¶ 794] **Art. 17. Effective date.**—The tax is effective as to all sales made on or after April 1, 1919, superseding the manufacturer's tax imposed by section 600 of the Revenue Act of 1917.

[¶ 795] **Art. 18. Use of terms.**—For the purpose of the tax and as used in these regulations, the term "dealer" means any individual, partnership, association, or corporation engaged in the business of selling for profit any of the enumerated articles to a purchaser for consumption or use, and the estate of such a dealer. Thus, a dealer may be a manufacturer, jobber, wholesaler, retailer, mail-order house, installment house, trustee in bankruptcy, receiver, pawnbroker, or peddler, if the sale is for consumption or use; but a casual sale, not in the course of trade or business, by an individual of any of the enumerated articles, does not constitute the vendor a "dealer" within the meaning of section 905. An auctioneer or broker is a dealer within the meaning of the act in respect to all sales made by him of articles in which he has title, but not in respect to articles which he is selling as an agent.

[¶ 796] **Art. 19 (as amended by T. D. 2936). Articles taxpaid under other acts.**—(a) The tax is on the sale by or for a dealer or his estate when any of the enumerated articles are sold for consumption or use, whether or not a tax under any other law has been previously paid on such articles. (b) Articles in respect to which the manufacturer's excise tax imposed by section 600 of the revenue act of 1917 has been paid are taxable under section 905 when sold for consumption or use by or for a dealer or his estate. (c) The tax imposed upon the manufacturer's sale of jewelry, under section 600 of the revenue act of 1917, is not a "corresponding tax" to the tax imposed by section 905 for the purpose of section 1312 of the act.

[¶ 797] **Art. 20. Consumption or use.**—An article is sold "for consumption or use" within the meaning of section 905 of the act if it is sold for any other purpose than to be sold, leased, or otherwise disposed of for profit, whether or not after change in form by process of manufacture.

Unless the purchaser is a wholesaler, retailer, or manufacturer customarily engaged in the business of selling or further manufacturing the articles in respect to which the applicability of the tax is in question, the sale to such purchaser will be deemed to be for consumption or use, unless the contrary is clearly shown.

Common or Commercial Jewelry.

[¶ 798] **Art. 21. Jewelry.**—The following articles are taxable as jewelry: (1) Articles to be worn on the person or apparel for purpose of adornment, which according to general custom or ordinary usage are worn so as to be displayed, such as brooches, rings, chains, cuff buttons, necklaces, fobs, and shoe buckles. Such articles are taxable regardless of the substance of which made (except as provided in subdivision (1) of article 22), and regardless of their utilitarian value.

The term "worn on the person" as used in this paragraph does not include articles to be carried in the hand or hung over the arm, such as bags or purses.

(2) Articles to be carried in the hand, or hung on the arm, or carried or worn concealed on the person, whether in pocket or bag or under the outer garment, such as cigarette cases, eyeglass cases, pencils, powder boxes, garter buckles, purses or hand bags. Such articles are taxable as jewelry only if made of or ornamented, mounted or fitted with, pearls, precious or semiprecious stones, or imitations thereof; but if so made, ornamented, mounted or fitted, they are taxable regardless of their utilitarian value. See also Article 24.

(3) Articles not taxable under the following Articles may be taxable by reason of being articles commonly or commercially known as jewelry, real or imitation. It should be carefully noted that the rulings in this article are only as to articles taxable as jewelry. Articles which are not taxable as jewelry may be taxable under Articles 23 or 24. Thus a cigarette case, if made of, or ornamented, mounted, or fitted with, a precious metal or imitation thereof, although not taxable under this article is taxable under Article 24. It should also be noted that the examples given in this article are not intended to be exhaustive, but merely illustrative.

Articles Not Taxable.

[¶ 799] Art. 22. **Articles not taxable.**—(1) The following articles of personal adornment are not taxable under section 905, unless ornamented, mounted or fitted with pearls, precious or semiprecious stones, or imitations thereof: (a) Articles made of textiles or feathers; (b) hat trimmings (not including hat pins); (c) shoe trimmings (not including buckles made of precious metal or imitations thereof, or ivory); (d) buttons ordinarily worn permanently attached to wearing apparel.

(2) Articles used as ornaments for wearing apparel are taxable if coming within the classification of subdivision (1) or (2) of Article 21, or if within the provisions of any of the following Articles.

Pearls, Stones, and Imitations.

[¶ 800] Art. 23. **Pearls, precious and semi-precious stones and imitations thereof.**—The tax attaches to the sale of all pearls and precious or semiprecious stones, whether real or imitation, cut or uncut, whether or not drilled, mounted, or matched, and whether or not temporarily or permanently strung, and whether with or without clasps.

Articles Made of Precious Metals or Imitations or Ivory.

[¶ 801] Art. 24 (as amended by T. D. 2893). **Articles made of, or ornamented or fitted with precious metals or imitations thereof or ivory.**—The term “precious metals” includes silver, gold, platinum and all metals more valuable than these. The term “imitations thereof” includes only platings or alloys of any of the above materials.

The following articles are not taxable under the clause of section 905 construed in this article: (1) Articles made of imitation ivory; (2) surgical instruments; (3) articles merely ornamented or overlaid with gold or silver leaf or paint, such as picture frames, books, and Christmas cards.

Glassware, china, pottery and like articles are only taxable if ornamented, mounted or fitted with precious metals or imitations thereof, but are not taxable when ornamented with gold or silver leaf or paint.

It should be carefully noted, however, that the articles above enumerated, although not taxable as “articles made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof or ivory,” may be taxable as jewelry. Thus a hatpin with a head of imitation ivory is taxable as jewelry. For articles taxable as jewelry see Article 21.

Eyeglasses and spectacles with frames or mountings made of or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, are sub-

ject to tax. The tax attaches to the selling price of the complete article, including frames, mountings and lenses and also to the charge for examination, unless this is billed as a separate item. No tax attaches to the sale of lenses separate and apart from the frames or mountings.

Shoe buckles not attached to shoes are taxable as jewelry under section 905 regardless of the material of which made, if they are ornamented, mounted, or fitted with pearls, precious or semiprecious stones, or imitations thereof. Shoe buckles made of or ornamented, mounted or fitted with precious metals or imitations thereof or ivory, are taxable under section 905. When shoe buckles are attached to shoes the tax of 10 per cent imposed by section 904, attaches to so much of the sales price of the shoes and buckles as is in excess of \$10 per pair. If the sales price is not in excess of \$10 per pair no tax attaches.

Fountain pens equipped with gold pen points are taxable on the total price for which such pens are sold. (The last three paragraphs added by T. D. 2893.)

NOTE: The Commissioner, by telegram, dated June 5, 1919, to an inquiring taxpayer held that rosaries and other religious emblems are taxable under section 905, if made of, mounted, or fitted with precious metals, imitations thereof, or ivory.

Watches and Clocks.

[§ 802] Art. 25. **Watches and clocks.**—Watch or clock movements sold separately are taxable. Watch or clock cases sold separately are taxable when made of, or ornamented, mounted or fitted with precious metals or imitations thereof or genuine ivory. Watches and clocks sold complete are taxable regardless of the substance of which made. Watch or clock cases and movements sold separately but intended to be used together are taxable.

Opera Glasses, etc.

[§ 803] Art. 26. **Opera glasses, lorgnettes, marine glasses, field glasses and binoculars.**—The enumeration in the statute includes only portable instruments. Instruments of the character enumerated, which by reason of their size or weight are ordinarily mounted upon tripods or other bases, are not taxable.

Second-hand Articles.

[§ 804] Art. 27. **Second-hand articles.**—Articles coming within the enumeration of section 905 are not exempt from taxation when sold by a dealer for consumption or use at second-hand or after being used, but are taxable on the price for which sold.

Repairs.

[§ 805] Art. 28 (as amended by T. D. 2893). **Repairs.**—Ordinary repairs which do not increase the value of the article repaired are not taxable, but repairs involving the addition of precious metals or imitations thereof or ivory are taxable upon the price of the added parts, which will be presumed to be the price charged for the job unless the contrary is shown.

Repairs which are merely such as to put the article in a serviceable condition as originally sold and which do not increase the original value of the article repaired, even though such repairs involve the addition of precious metals or imitations thereof, or ivory, are not taxable under section 905. However, repairs involving the addition of precious metals or imitations thereof, or ivory, not falling in the above class, or pearls, precious and semiprecious stones and imitations thereof are taxable upon the price of the added parts, which will be presumed to be the price charged for the job unless the contrary is shown.

ADMINISTRATIVE PROVISIONS.**Exports.**

[¶ 806] **Sec. 1310. (c)** Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed under the provisions of Titles VI, VII, or IX shall not apply in respect to articles sold or leased for export and in due course so exported. Under such rules and regulations the amount of any internal-revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

[¶ 807] **Art. 29. Exemption of export sale.**—The tax does not attach to the sale of an article which is either (1) shipped direct to a foreign destination by the manufacturer himself, or (2) both (a) sold by him for export and (b) in due course so exported by the purchaser. Where a manufacturer at the time an article is sold or shipped (whichever is prior) has in his possession an order or contract of sale showing in writing (1) that the manufacturer is to export the article, or (2) that the purchaser is buying the article in order to export it prior to its being used or subjected to further manufacture, there is a presumption that the sale of the article is exempt from tax, as an export sale, and the manufacturer may, for a period of six months from the date of sale or shipment (whichever is prior), rely on such presumption. This presumption becomes conclusive upon the manufacturer's receiving and attaching to such order or contract, before the termination of such period of six months, due "proof of exportation" (see Art. 30) of such article. On the other hand, if, within such period of six months, the manufacturer has not received, and attached to such order, or contract, such "proof of exportation," then the presumption that such sale is an export sale disappears, and the manufacturer shall include a tax on the sale of such article in his return for the month in which such period of six months expires. The order or contract of sale and the "proof of exportation" must be preserved by the manufacturer in such a way as to be readily accessible for inspection by internal-revenue officers. No sale shall be considered to be exempt from tax under section 1310 (c) of the act, unless its character as an export sale has been established in accordance with the above provisions.

[¶ 808] **Art. 30. Proof of exportation.**—By the term "proof of exportation" is meant: (1) An affidavit made by the exporter containing the following information: The name and address of the manufacturer, the name and address of the exporter (who, if not the manufacturer, must be a person who has purchased direct from the manufacturer), the respective dates of the sale (or shipment, whichever is prior), and exportation of the article, the price for which purchased, the fact that the article has been exported by the manufacturer or original purchaser without having been used or subjected to further manufacture, the name of the port of foreign destination, the name and address of the carrier issuing the export bill of lading, and any further information necessary to identify the article sold with the article exported; and (2) attached to such affidavit a copy of the export bill of lading, or a certificate by the agent or representative of the export carrier showing the exportation of the article, or if exported by parcel post, a copy of the certificate of mailing.

Trade with Possessions of the United States.

[¶ 809] **Sec. 1304.** That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of such islands: Provided, That there shall be levied, collected and paid in such islands, upon articles imported from the United States, a tax equal to the internal-

revenue tax imposed in such islands upon like articles there manufactured; and such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal revenue laws of the United States.

[¶ 810] **Art. 31. Trade with possessions of United States.**—A sale which results in the shipment of articles into the United States from the Virgin Islands is taxable to the same extent as a sale of articles within the United States. Articles going into the Virgin Islands from the United States are free from tax in the United States. The same rules apply to trade with Porto Rico and the Philippine Islands. See section 1000 of the revenue act of 1917 and Section V of the act of August 4, 1909, as amended by Section IV, subdivision C, of the act of October 3, 1913. The tax attaches, however, to articles shipped to other possessions of the United States, including the Canal Zone.

Transfer of Burden of Tax.

[¶ 811] **Sec. 1312 (2).** If (a) any person has prior to September 3, 1918, made a bona fide contract with a dealer for the sale * * * after the tax takes effect, of any article in respect to which a tax is imposed under Title * * * IX * * * or under this subdivision, and in respect to which no corresponding tax was imposed by the revenue act of 1917, and (b) such contract does not permit the adding, to the amount to be paid under such contract, of the whole of the tax imposed by this act, then the vendee * * * shall, in lieu of the vendor * * * pay so much of the tax imposed by this act as is not so permitted to be added to the contract price. If a contract of the character above described was made with any person other than a dealer, no tax shall be collected under this act.

[¶ 812] **Art. 32. Transfer of burden of tax.**—(a) In the case of articles taxable under section 902 if A (who is not the artist) made a contract of the character described in the statute with B, a dealer, before September 3, 1918, the liability for tax on sales made on or after February 25, 1919, in pursuance of such contract, is on B, with only a duty on A to collect and pay it to the collector. If in the above case B also made before September 3, 1918, a contract of the character described with C, another dealer, the liability for such tax, thus imposed on B, is transferred from B to C, B being obligated only to collect the tax from C and pay it over to A for payment to the collector. If, however, any person made before September 3, 1918, a contract of the character described with any person other than a dealer, no tax is due in respect to the sale under such contract.

(b) In the case of articles taxable under section 905, if a dealer, before September 3, 1918, made a contract of the character described in the statute for the sale on or after April 1, 1919, of any of the enumerated articles for consumption or use, the sales made in pursuance of such contract are not taxable. (See Article 19 (c).)

Return and Payment of Tax.

[¶ 813] **Sec. 903.** That every person liable for any tax imposed by section * * * 902 * * * shall make monthly returns under oath in duplicate and pay the taxes * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return.
* * *

[¶ 814] **Sec. 905.** * * *

Every person selling any of the articles enumerated in this section shall make returns under oath in duplicate (monthly or quarterly as the Commissioner, with the approval of the Secretary, may prescribe) and pay the taxes imposed in respect to such articles by this section to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return.

[§ 815] **Sec. 1312.** (4) The taxes payable by the vendee * * * under this section shall be paid to the vendor at the time the sale * * * is consummated and collected, returned, and paid to the United States by such vendor * * * in the same manner as provided in section 502.

[§ 816] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement * * * of this act (and) * * * may by regulations provide that any return required by Titles * * * IX * * * to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

[§ 817] **Art. 33. Return and payment of tax.**—In accordance with the sections above set forth and section 502, every person liable for the tax in respect to the sale of any of the articles enumerated in section 902 or section 905 must make monthly returns under oath in duplicate (except that if the amount of tax covered thereby is not in excess of \$10 such returns may be signed and acknowledged before two witnesses instead of under oath), and pay the taxes imposed on such articles to the collector of internal revenue for the district in which his principal place of business is located. If he has no place of business, return should be made to the collector for the district in which he resides. An itinerant dealer should make return and pay the tax to the collector of the district where the sales are made. The returns shall be made on Form 728A. Instructions for preparing the return will be found on the back of the form. The returns are to be rendered and the tax paid on or before the last day of each month covering the transactions of the preceding month. The first return under section 902 must cover all transactions from February 25, 1919, to March 31, 1919, both inclusive, and is to be made on or before May 31, 1919. The first return under section 905 must cover all transactions from April 1, 1919, to April 30, 1919, both inclusive, and is to be made on or before May 31, 1919. The books of every person liable to the tax shall be open at all times for inspection by examining internal-revenue officers.

Returns by Agents.

[§ 818] **Art. 34. Returns by agents.**—Every auctioneer, agent, factor, broker, dealer, or other person selling any of the articles enumerated in section 902, as agent for the owner, unless such owner is the artist, shall make monthly return under oath to the collector for the district in which his principal place of business is located, stating as to each article sold for any such owner the name and address of such owner, the date and amount of the sale, and a brief description of the article.

Credits and Refunds.

[§ 819] **Sec. 1310.** (a) That in the case of any overpayment or overcollection of any tax imposed by * * * Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

(b) Wherever in this act a tax is required to be paid by the purchaser to the vendor at the time of a sale, and such sale is made on credit, then, under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax may, at the option of the vendor, be returned and paid by him to the United States as if paid to him by the purchaser at the time of the sale, and in such case the vendor shall have a right of action in any court of competent jurisdiction against the purchaser for the amount of the tax so returned and paid to the United States.

[§ 820] **Art. 35. Credits and refunds.**—If a person overpays the tax due with one monthly return, he may take credit for the overpayment against the tax due with a succeeding return. If under section 1312 of the statute or otherwise he similarly overcollects the tax, he shall refund the overcollection

to the purchaser. If in a case under section 1312 he sells on credit, he shall make return of the tax at the time of the sale, but may defer collection of it from the purchaser. (See. Art. 4.) For the procedure with reference to claims for refund see sections 3220 and 3225 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, and Regulations No. 14 (revised).

NOTE: T. D. 2991, approved March 13, 1920, contains instructions to collectors as to claims for refund or abatement of sales taxes and penalties on Form 751 and Blanket Form No. 47.

Fractional Part of Cent.

[¶ 821] **Sec. 1313.** That in the payment of any tax under this act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

[¶ 822] **Art. 36. Fractional part of cent.**—In computing the tax a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to a full cent.

Penalties.

[¶ 823] **Art. 37. Penalties.**—Section 3176 of the United States Revised Statutes, as amended by **Section 1317** of the Revenue Act of 1918.

[¶ 824] **Sec. 3176.** * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

[¶ 825] Sections 903, 905, 1308 and 1319, of the Revenue Act of 1918:

Sec. 903. * * * If the tax is not paid when due, there shall be added as part of the tax, a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 826] **Sec. 905.** * * * If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 827] **Sec. 1308. (a)** That any person required under Titles IX * * * to pay * * * any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay * * * any such tax, make any such return, or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law, be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay * * * any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax, shall be guilty of a misdemeanor, and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the cost of prosecution.

(c) Any person who willfully refuses to pay * * * any such tax shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, * * * to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, that no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended. * * *

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 828] **Sec. 1319.** That whoever in connection with the sale * * * or offer for sale * * * of any article, or for the purpose of making such sale * * * makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold * * * or offered for sale * * * consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

Authority for Regulations.

[¶ 829] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act.

[¶ 830] **Art. 38. Promulgation.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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EXCISE TAXES

ON

SALES BY THE DEALER OF WEARING APPAREL, ETC.

SECTION 904 OF TITLE IX OF THE
REVENUE ACT OF 1918

Law,
Regulations 54, and
Treasury Decisions

Indexed

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LAW,

REGULATIONS No. 54 AND TREASURY DECISIONS

RELATING TO

EXCISE TAXES ON SALES BY DEALER OF WEARING APPAREL, ETC.

IMPOSITION OF TAX.

[¶ 831] Sec. 904. (a) That on and after May 1, 1919, there shall be levied, assessed, collected, and paid a tax equivalent to 10 per centum of so much of the amount paid for any of the following articles as is in excess of the price hereinafter specified as to each such article, when such article is sold by or for a dealer or his estate on or after such date for consumption or use.

[¶ 832] Article 1. **Effective date.**—The tax is imposed with respect to articles sold on or after May 1, 1919.

[¶ 833] Art. 2. **Purchaser is liable.**—The law imposes the tax upon the purchaser. It is to be collected from him by the dealer, who must repay it to the collector of internal revenue, but see Article 4.

[¶ 834] Art. 3. **Who is the dealer?**—For the purpose of the tax and as used in these regulations, the term “dealer” means any individual, partnership, association, or corporation, and the estate of such a dealer, engaged in the business of selling for profit any of the enumerated articles, to a purchaser for consumption or use. Thus, a dealer may be a manufacturer, jobber, wholesaler, retailer, mail order house, installment house, trustee in bankruptcy, receiver, pawnbroker, or peddler, if the sale is for consumption or use; but a casual sale, not in the course of trade or business, by an individual, of any of the enumerated articles, does not constitute the vendor a “dealer” within the meaning of section 904. An auctioneer or broker is a dealer within the meaning of the act in respect to all sales made by him of articles in which he has title, but not in respect to articles which he is selling as an agent.

[¶ 835] Art. 4. **Dealer responsible for tax.**—Responsibility for collecting the tax is imposed upon the dealer, on all sales made direct by him or through an agent, whether a sales agent, broker, or auctioneer, and the dealer must pay it to the Collector of Internal Revenue (see article 33). A receiver or trustee in bankruptcy conducting a business under court order is responsible for the collection of the tax upon articles sold by him.

Failure to collect the tax will not relieve the dealer of responsibility for payment thereof.

[¶ 836] Art. 5. **Consumption or use.**—The tax applies to goods sold for consumption or use. An article sold for the purpose of resale, either in the original or in an altered or further manufactured form or for similar profitable disposition, is not subject to tax upon such sale.

However, an article will none the less be regarded as sold for consumption or use because it is expected to realize profit from its use. An article purchased, for instance, to be leased or rented, or for furnishing a building to be leased or rented, is nevertheless procured for consumption or use and therefore taxable.

Unless the purchaser is a wholesaler, retailer, or manufacturer, customarily engaged in the business of manufacturing or selling the article in respect to which the applicability of the tax is questioned, the sale to him will be deemed to be for consumption or use, unless the contrary is clearly shown.

[¶ 837] Art. 6. **Basis of tax—Sale.**—The tax is on the sale by or for a dealer or his estate, of any of the articles enumerated in section 904 when sold

for consumption or use. The tax is payable in respect to a sale made, whether or not the purchase price is actually collected, but see article 9.

Price.—The tax is measured by the price for which the article is sold. It is on the actual sales price of the goods sold and not on the list price, where that differs from the sales price. The tax can not be included in the selling price, but must be billed as a separate item.

Premiums.—The giving of so-called “premiums” in return for wrappers, labels, coupons, trading stamps, or other script delivered in connection with the sale of a commodity, is a sale by a dealer within the meaning of section 904, if the premium is within the class of articles enumerated in that section. In such cases the tax attaches at the time title in the premium passes to the person receiving it in exchange for such script, and is to be computed on the fair market value of the premium at such time.

For the rule when an article is within the language of two or more sections of the statute, each imposing a tax, see article 32.

[¶ 838] **Art. 7. Discounts and expenses.**—A discount for cash or other discount made subsequently to the sale can not be deducted in computing the price for the purpose of the tax, but see article 6 as to goods sold for less than the list price.

Commissions.—Commissions to agents and other expenses of sale are not deductible from the price.

Delivery charges.—If articles are sold and the delivery charges to point of delivery are paid by the purchaser as a specific item, or if they are sold delivered at a sum less delivery charges to be paid by the purchaser, such charges need not be included as part of the price of the goods; but if the dealer sells goods at a delivered price, and himself pays the delivery charges, he is not entitled to make any deduction on account of the inclusion in the price of such charges.

[¶ 839] **Art. 8. Exchanges and refunds.**—(a) If taxable articles are sold and subsequently returned, and the sale entirely rescinded, no tax is payable; and if paid it may be refunded to the purchaser and the dealer may take credit therefor in the return for the month in which the refund is made.

(b) If part only of the taxable articles sold at one time are returned and amount paid therefor refunded by the dealer, or if taxable articles are sold and thereafter exchanged for other taxable articles at a lower price, or if taxable articles are sold and thereafter exchanged for other taxable articles at a higher price, the purchaser paying the difference, the purchaser must pay the tax on the second sale, and the dealer shall give a credit or refund to the purchaser of the tax paid on each of the taxable articles returned, and take credit therefor in the return for the month in which the refund is made or credit to the purchaser allowed.

(c) If taxable articles are sold and thereafter exchanged for other articles which are not taxable, and credit or refund is allowed by the dealer therefor, no tax is payable on the first or second sale; and if already paid, the tax on the first sale may be refunded to the purchaser and the dealer may take credit therefor in the return for the month in which the tax is refunded or credit is allowed to the purchaser.

As to records to be kept, see article 33.

[¶ 840] **Art. 9 (as amended by T. D. 3066). When tax attaches.**—The tax attaches when the article is sold; that is to say, when the title to it passes from the dealer to the purchaser pursuant to a previous contract of sale or upon a sale without previous contract. When title passes is a question of fact dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. Where goods are segregated from other

goods owned by the dealer and it is the intention of both the dealer and the purchaser at the time the goods are segregated that they shall then belong to the purchaser, the title will be presumed to pass at such time. In the absence of an intention to the contrary the title is presumed to pass upon delivery of the article to the purchaser or to a carrier for the purchaser. In the case of a conditional sale, where the title is reserved in the dealer until payment of the purchase price in full, the tax attaches (a) upon such payment, or (b) when title passes if before completion of the payments, or (c) when, before completion of the payments, the dealer disposes of the sale by charging off, by any method of accounting he may adopt, the unpaid portion of the contract price. If the vendor, by discounting notes of the purchaser or otherwise, disposes of or transfers his title or interest in the conditional sale, he shall return and pay the tax at that time. If under such circumstances the conditional sale is not later completed, the vendor shall, upon application by the purchaser, refund the amount of the tax collected and may take credit for the amount upon his next monthly return.

[§ 841] Art. 10. **Sales to a State or subdivision thereof.**—Articles sold to a State or political subdivision thereof for use in carrying on its governmental operations, or to a State, county, or municipal institution, are, when paid for entirely out of public moneys, exempt from tax.

[§ 842] Art. 11. **Second hand articles.**—Articles coming within the enumeration of section 904 are not exempt from taxation when sold by a dealer for consumption or use at second hand, or after being used, but tax shall be paid upon the taxable portion of the purchase price for which sold.

[§ 843] Art. 12. **Repairs and alterations.**—Ordinary repairs or alterations are not taxable. If, however, the cost of making alterations is included in the price of an article sold for consumption or use, the total price must be considered in computing the tax.

ARTICLES SUBJECT TO TAX.

[§ 844] Sec. 904. (a) (1) Carpets and rugs, including fiber, except imported and American rugs made principally of wool, on the amount in excess of \$5 per square yard.

[§ 845] Art. 13 (as amended by T. D. 3087.) For the purpose of the tax, carpets and rugs shall include all merchandise commonly or commercially known as carpets, rugs, or matting, either woven or felted, and whether used as floor coverings or otherwise, or mats when used as floor covering.

The act expressly exempts from taxation imported and American rugs made principally of wool. Rugs made principally of wool shall be held to be those rugs which contain in weight more wool than any other one component material. The respective weights of the several materials in the shape of yarn in the hank, prior to scouring, cleaning, dyeing or printing, shall be accepted as the basis for determining whether a rug is made principally of wool. Rugs made principally of silk, fiber, cotton, jute, linen, hemp, grasses of any kind, straw or any material other than wool are subject to tax. (This par. is published in T. D. 3087, issued Oct. 28, 1920.)

A rug shall be held to be distinguishable from carpet when manufactured as one piece or made by the manufacturer from breadths which are united so as to form one piece, of a distinctive manufacture, size, shape and design, figured or plain. Carpet, when sold by the yard and sewed together so as to produce a certain size or design desired by the purchaser, shall not be deemed to be a rug within the meaning of the act, and is taxable, even though made principally of wool.

The unit of measurement is the square yard. Therefor the size of a rug or the quantity of carpet shall be so calculated as to be capable of applying the tax thereto at so much per square yard. All lineal yardage, whether the strips be wider or narrower than 36 inches, must be converted into square measure. For example, a lineal yard of carpet of the ordinary width of 27 inches contains but three-quarters of a square yard. If such carpet is sold for more than \$3.75 per lineal yard, it is taxable, because \$3.75 per lineal yard is equivalent to \$5 per square yard. Fringe will not be considered in computing the yardage.

If carpet is sold at a specified price per yard and such price includes sewing, sizing, or laying, the tax shall attach to the combined price in excess of \$5 per square yard, unless the sewing, sizing, or laying is billed separately, in which case the tax attaches only to the price of the carpet in excess of \$5 per square yard.

Exceptions.—Carpets and rugs which are (1) sold for \$5 or less per square yard, or which are (2) made of fur on the hide or pelt, or of which such fur is the component material of chief value, are not subject to this tax, but see article 32.

[¶ 846] **Sec. 904. (a) (2)** Picture frames on the amount in excess of \$10 each.

[¶ 847] **Art. 14.** For the purpose of the tax, picture frames shall include shadow boxes and any frame primarily adapted for framing a picture, irrespective of the use to which actually put. Where the glass, mat, and frame or shadow box, are sold as one item, the tax attaches to the amount for which so sold in excess of \$10. If a painting and frame are sold as one item, the 10 per cent tax imposed by section 902 of the act on paintings applies to the total selling price and the tax on frames will not apply. See article 32; also see article 16, regulations 48. If a frame and picture or other thing framed, not a painting, are sold as one item, the tax shall be computed upon the value of the frame and object framed, unless the value of the frame can be separately determined, in which case the tax shall be computed upon the value of the frame.

Exceptions.—Picture frames which are sold for \$10 or less each, or which are made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, are not subject to this tax, but see article 32. The exception with respect to articles made of or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, does not apply to frames merely ornamented or overlaid with gold or silver leaf or paint, which are subject to tax under these regulations as frames.

[¶ 848] **Sec. 904. (a) (3)** Trunks, on the amount in excess of \$50 each.

[¶ 849] **Art. 15.** For the purpose of the tax the term "trunks" shall be held to include all receptacles which are commonly or commercially designated as trunks, designed to be used wherein to convey the effects of a traveler. It shall not, however, be held to include articles such as hampers, packing boxes or cases, nor chests designed to be used wherein to convey tools, medicine, or silver.

Exceptions.—Trunks which are made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, or which are sold for \$50 or less each, are not subject to this tax, but see article 32.

[¶ 850] **Sec. 904. (a) (4)** Valises, traveling bags, suit cases, hat boxes used by travelers, and fitted toilet cases, on the amount in excess of \$25 each.

[¶ 851] **Art. 16.** For the purposes of the tax, valises, traveling bags, and suit cases shall include all receptacles which are commonly or commercially designated as such or designed to be used wherein to carry in the hand the

effects of a traveler. Hat boxes shall include any receptacle designed to be used wherein to convey hats in traveling. Fitted toilet cases shall not be limited in meaning to those designed and used for traveling purposes, but shall include all receptacles of any form whatsoever (other than purses, pocket-books, shopping and hand bags, as defined in article 17) designed and fitted to contain toilet articles.

Exceptions.—Valises, traveling bags, suit cases, and hat boxes, as above defined, and fitted toilet cases, which are sold for \$25 or less each, or which are made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, are not subject to this tax, but see article 32.

[¶ 852] Sec. 904. (a) (5) Purses, pocketbooks, shopping and hand bags, on the amount in excess of \$7.50 each.

[¶ 853] Art. 17. For the purpose of the tax purses shall be deemed to include all receptacles used for carrying money on or about the person. The term "pocketbook" is broader in meaning than "purse," and includes any receptacle other than a purse for carrying money, papers, cards, memoranda, etc., in the pocket or on or about the person. The term "shopping and hand bags" shall include all bags, whether or not fitted with toilet articles, designed to be carried in the hand or on the arm for the purpose of conveying commodities or personal effects; but it shall not include articles such as valises, traveling bags, suit cases, and fitted toilet cases mentioned in article 16. The fact that a purse, pocketbook, hand or shopping bag is fitted with or for toilet articles does not take it from this subdivision nor make it taxable under the provisions of article 16.

Exceptions.—Purses, pocketbooks, shopping and hand bags which are (1) sold for \$7.50 or less each, or which are (2) made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, or (3) made of fur on the hide or pelt, or of which any such fur is the component material of chief value, are not subject to this tax, but see article 32.

[¶ 854] Sec. 904. (a) (6) Portable lighting fixtures, including lamps of all kinds and lamp shades, on the amount in excess of \$25 each.

[¶ 855] Art. 18 (as amended by T. D. 2950). For the purpose of the tax, portable lighting fixtures and portable lamps shall be deemed to include all lighting devices adapted for interior illumination and not designed to be affixed permanently in one location and all articles commonly or commercially known as such, irrespective of the principle of illumination used. A portable lamp and shade sold jointly will be regarded as a single item, for taxing purposes, but a shade pertaining to a portable lamp or lighting fixture, if sold separately, will be taxable. A portable lamp and shade, even though sold at the same time, shall not be regarded as a single item, but as separate items, and in computing the tax the purchaser shall be entitled to a separate \$25 exemption as to each item. For example, if the selling price of a lamp is \$50 and a shade \$30, even though the two articles are sold to one purchaser, the tax on the sale of the lamp will be \$2.50 and on the sale of the shade, 50 cents.

Exceptions.—Portable lighting fixtures, lamps, and lamp shades which are sold for \$25 or less each, or which are made of, or ornamented, mounted, or fitted with precious metals, or imitations thereof, or ivory, are not subject to this tax, but see article 32.

[¶ 856] Sec. 904. (a) (7) Umbrellas, parasols, and sun shades, on the amount in excess of \$4 each.

[¶ 857] Art. 19. For the purpose of the tax, umbrellas, parasols, and sun shades shall be deemed to include all portable or collapsible devices primarily adapted to protect the person from the rain or sun, and carried in the hand, and those of similar design and character attached to vehicles, etc.

Exceptions.—Umbrellas, parasols, and sun shades which are sold for \$4 or less each, or which are made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, are not subject to this tax, but see article 32.

[¶ 858] **Sec. 904. (a) (8)** Fans, on the amount in excess of \$1 each.

[¶ 859] **Art. 20.** For the purpose of the tax, fans shall be deemed to include those articles commonly or commercially known by this name, designed to produce movements of the air by waving in the hand.

Exceptions.—Fans which are (1) sold for \$1 or less each, or which are (2) made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, or (3) made of fur on the hide or pelt, or of which any such fur is the component material of chief value, are not taxable under this subdivision, but see article 32.

[¶ 860] **Sec. 904. (a) (9)** House or smoking jackets, and bath or lounging robes, on the amount in excess of \$7.50 each.

[¶ 861] **Art. 21.** For the purpose of the tax, house and smoking coats or jackets, and bath robes shall include all garments which are commonly or commercially known by these designations. "Lounging robes" shall include all other men's and women's garments (except kimonos as defined in article 31), designed for indoor wear only, as negligee robes; thus, breakfast coats, boudoir gowns, tea gowns, etc., are taxable as lounging robes, unless clearly embraced within the definition of a kimono.

Exceptions.—House or smoking jackets, and bath or lounging robes which are sold for \$7.50 or less each, or which are made of fur on the hide or pelt, or of which any such fur is the component material of chief value, are not subject to this tax, but see article 32.

[¶ 862] **Sec. 904. (a) (10)** Men's waistcoats, sold separately from suits, on the amount in excess of \$5 each.

[¶ 863] **Art. 22.** For the purpose of the tax, men's waistcoats (otherwise termed "vests") shall include all articles commonly or commercially known as such, when sold separately from suits.

Exceptions.—Men's waistcoats (1) which are sold for \$5 or less each, or (2) which are made of fur on the hide or pelt, or of which any such fur is the component material of chief value, or (3) which are designed and primarily adaptable as a part of a livery, or (4) which are designed and primarily adaptable as a hunting or shooting garment, or as a part of a riding habit, are not subject to this tax, but see article 32.

[¶ 864] **Sec. 904. (a) (11)** Women's and misses' hats, bonnets, and hoods, on the amount in excess of \$15 each.

[¶ 865] **Art. 23.** For the purpose of the tax, women's and misses' hats, bonnets and hoods include all such articles as are commonly or commercially known by any of these designations, and all hats, bonnets, and hoods designed to be worn by women and misses 14 years of age or older.

Exceptions.—Women's and misses' hats, bonnets, and hoods (1) which are sold for \$15 or less each, or (2) which are made of fur on the hide or pelt, or of which such fur is the component material of chief value, or (3) which are designed and primarily adaptable as a part of a livery, or (4) which are designed and primarily adaptable for use as a hunting or shooting garment or as a part of a riding habit, are not subject to this tax, but see article 32.

[¶ 866] **Sec. 904. (a) (12)** Men's and boys' hats, on the amount in excess of \$5 each.

[¶ 867] **Art. 24.** For the purpose of the tax, men's and boys hats shall include any headdress designed to be worn by men, and any headdress designed to be worn by boys of 6 years of age or older, or of sizes 6 $\frac{1}{8}$ or larger, which are commonly and commercially known as hats.

Exceptions.—Men's and boys' hats (1) which are sold for \$5 or less each, or (2) which are made of fur on the hide or pelt, or of which any such fur is the component material of chief value, or (3) which are designed and primarily adaptable as a part of a livery, or (4) which are designed and primarily adaptable as a hunting or shooting garment, or as a part of a riding habit, are not subject to this tax, but see article 32.

[¶ 868] **Sec. 904. (a) (13)** Men's and boys' caps, on the amount in excess of \$2 each.

[¶ 869] **Art. 25** (as amended by T. D. 2893). For the purpose of the tax, men's and boys' caps shall include all articles worn by men, commonly and commercially known as caps, having a visor but no brim, and all such articles designed to be worn by boys 6 years of age or older, or sizes $6\frac{1}{8}$ and larger. Military caps are taxable if sold for a price in excess of \$2.00 each. (This sentence added by T. D. 2893.)

Exceptions.—Men's and boys' caps (1) which are sold for \$2 or less each, or (2) which are made of fur on the hide or pelt, or of which any such fur is the component material or chief value, or (3) which are designed and primarily adaptable as a hunting or shooting garment, or (4) as a part of a riding habit, are not subject to this tax, but see article 32.

[¶ 870] **Sec. 904. (a) (14)** Men's, women's, misses', and boys' boots, shoes, pumps, and slippers, not including shoes or appliances made to order for any person having a crippled or deformed foot or ankle, on the amount in excess of \$10 per pair.

[¶ 871] **Art. 26.** For the purpose of the tax, men's and women's boots, shoes, pumps, and slippers shall include all articles of whatever material made, commonly or commercially known by any of these designations. Similar articles for boys of 6 years of age and older or of sizes 1 and larger, and for misses of 14 years of age and over or of sizes 11 and larger, are taxable.

Shoes, boots, etc., although having buckles or other ornaments of precious metal, imitation thereof, or ivory, attached, are subject to this tax on the entire value in excess of \$10 per pair, the ornaments not being subject to tax separately. If buckles or other such ornaments are sold separately and afterwards attached, the ornaments will be subject to tax separately while the shoes, boots, etc., will be taxable as such on the amount for which sold in excess of \$10. As to the rate of tax applicable to ornaments made of precious metals, or imitations thereof, see article 32.

Exceptions.—The above mentioned articles which are (1) sold for \$10 or less per pair, or (2) which are made of fur on the hide or pelt, or of which such fur is the component material of chief value, or (3) which are designed and primarily adapted as part of a livery, are not subject to this tax, but see article 32.

Express exemption from taxation under this subdivision is made of any shoe or appliance made to order for any person having a crippled or deformed foot or ankle.

[¶ 872] **Sec. 904. (a) (15)** Men's and boys' neckties and neckwear, on the amount in excess of \$2 each.

[¶ 873] **Art. 27.** For the purpose of the tax, men's and boys' neckties and neckwear shall include cravats, ties, collars, stocks, neckerchiefs, mufflers, scarfs, and other articles of neckwear, by whatever name known, designed to be worn by men or boys of 6 years of age and over.

Exceptions.—Men's and boys' neckties and articles of neckwear (1) which are sold for \$2 or less each, or (2) which are made of fur on the hide or pelt, or of which any such fur is the component material of chief value, are not subject to this tax, but see article 32.

[¶ 874] **Sec. 904. (a) (16)** Men's and boys' silk stockings or hose, on the amount in excess of \$1 per pair.

(17) Women's and misses' silk stockings or hose, on the amount in excess of \$2 per pair.

[¶ 875] Art. 28 (as amended by T. D. 2893). The tax is on men's and boys' silk stockings or hose, on the amount in excess of \$1 per pair, and women's and misses' silk stockings or hose, on the amount in excess of \$2 per pair. The tax attaches to stockings and hose for men and women, misses 14 years of age and older, and boys of 6 years of age and older, including, in the case of female attire, all stockings and hose of sizes 8 and larger, and in the case of boys, all stockings and hose of sizes 7 and larger. Surgical elastic hose used for the purpose of giving relief to or strengthening weak or injured limbs are not taxable, even though made of silk. (Last sentence added by T. D. 2893.)

[¶ 876] Sec. 904. (a) (18) Men's shirts, on the amount in excess of \$3 each.

[¶ 877] Art. 29. For the purpose of the tax, men's shirts shall include all garments commonly or commercially known as such, of whatever material made, but shall not include undershirts taxable as underwear.

Exceptions.—Shirts sold for \$3 or less each are not subject to this tax; also see article 32.

[¶ 878] Sec. 904. (a) (19) Men's, women's, misses', and boys' pajamas, nightgowns, and underwear, on the amount in excess of \$5 each.

[¶ 879] Art. 30 (as amended by T. D. 2893). For the purpose of the tax, men's, women's, misses', and boys' pajamas and nightgowns shall include any garment commonly or commercially known by any of these designations for men or women, for misses 14 years of age and older, and for boys 6 years of age and older, including in the case of boys, sizes 6 and larger.

Underwear shall include any garment worn under the outer dress, such as undershirts, drawers, pants, bloomers, union suits, combination suits, tights, camisoles, corsets, corset covers, brassieres, chemises, and vests. This list is by no means intended to be exhaustive, but merely to give a general notion of the wide variety of articles taxable. Petticoats and underskirts, which are specially taxed under subdivision (20) of section 904, are not taxable under this subdivision. (See article 31 of these Regulations.) Abdominal belts and supports are not taxable as underwear. Corsets made for abnormal and deformed figures are subject to tax as underwear, unless made to be worn as a remedial agent upon the order or prescription of a physician or surgeon.

Exceptions.—Any of the above enumerated articles which are sold for \$5 or less each, or which are made of fur on the hide or pelt, or of which any such fur is the component material of chief value are not subject to this tax, but see article 32. (Last two sentences of the second par. added by T. D. 2893.)

[¶ 880] Sec. 904. (a). (20) Kimonos, petticoats, and waists, on the amount in excess of \$15 each.

[¶ 881] Art. 31. For the purpose of the tax, kimonos shall include (1) all garments commonly or commercially known as kimonos, and (2) all apparel made in accordance with the so-called Japanese style of garment and not a modification thereof, such as is taxable under article 21. Petticoats and waists shall include underskirts and all kinds of waists, whether for outer wear or for wear under another outer garment, and all other garments commonly or commercially known by these designations.

Exceptions.—Any of the above enumerated articles which are sold for \$15 or less each, or which are made of fur on the hide or pelt, or of which such fur is the component material of chief value are not subject to this tax, but see article 32.

EXCEPTIONS.

[¶ 882] Sec. 904. (b) The tax imposed by this section shall not apply (1) to any article enumerated in paragraphs (2) to (8), both inclusive, of subdivision (a), if such article is made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof or ivory, or (2) to any article made of fur on the hide or pelt, or of which any such fur is the component material of chief value, or to (3) any article enumerated in subdivision (17) or (18) of section 900.

[¶ 883] Art. 32. When an article is within the language of two or more sections of the statute, by each of which a tax is imposed, the article shall not be doubly taxed, but shall, as a general rule, be held taxable under that section which contains the more specific description; thus, subdivision 14 of section 904 (a) imposes a tax on shoes and section 905 imposes a tax on articles made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory. A pair of leather shoes ornamented with gold buckles would fall within the terms of both these sections; but the description "shoes," being the more specific, would be the controlling description for taxable purposes. (See article 26 of these Regulations.)

While this is the general rule, the statute makes certain broad exceptions. As an illustration of the exceptions made by the statute the case of fans may be taken. Fans are taxable as such under paragraph (8) of section 904 (a).

They are also within the language of section 905 when made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory. In the absence of statutory provision to the contrary the description "fans," being the more specific, would control, but subdivision (b) of section 904 specifically provides that articles enumerated in paragraphs (2) to (8), both inclusive, of section 904 (a), when made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, shall not be subject to the tax imposed by section 904; and this specific exclusion (so far as the articles which it covers are concerned) reverses the above-mentioned general rule, and makes the less specific description apply. For instance, a fan, being one of the articles specifically exempted from taxation under section 904, when made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, is taxable under section 905 at the rate of 5 per cent of the full sales price and not under subdivision (8) of section 904 (a). See article 20 of these Regulations.) And any other article which is made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, if it is one of the articles enumerated in paragraphs (2) to (8), inclusive, of section 904 (a) (articles 14 to 20, inclusive, of these Regulations), is not subject to tax under section 904. Of course, a fan or any other article enumerated in paragraphs (2) to (8), inclusive, of section 904, which is not made of, or ornamented, mounted, or fitted with precious metals or imitations thereof, or ivory, and which is not within either of the other exceptions made by section 904 (b), is taxable under section 904.

Of the other exceptions made by section 904 (b), one relates to articles made of fur on the hide or pelt, or of which any such fur is the component material of chief value (an article will not be regarded as within this exception unless fur is that component material which is not exceeded in value by any other single component material in the article; the other relates to articles enumerated in subdivisions (17) and (18) of section 900. Of these two subdivisions, (17) relates to liveries and livery boots and hats, and (18) relates to hunting and shooting garments and riding habits. These exceptions are not limited to any particular subdivisions of section 904 (a), but relate to them all. Therefore any article whatever, which is made principally of fur on the hide or pelt, or of which any such fur is the component material of chief value, or which is enumerated in subdivision (17) of section 900 of the statute, covering liveries and livery boots and hats, or in subdivision (18) of section 900, covering hunting and shooting garments and riding habits, is not subject to tax under these Regulations, but to the 10 per cent tax on the full sales price imposed by section 900 of the statute. (See articles 29, 30, and 31 of Regulations No. 47.)

It will sometimes happen that the same article is within more than one of the exceptions specified by section 904 (b) of the statute. The rule, that the more specific description governs, again applies. Either of the other designations (that is, furs, liveries, or hunting garments) covered by the several exceptions, is more specific than that relating to articles made of, or ornamented, mounted, or fitted with, precious metals or imitations thereof, or ivory. This latter is also the only designation covering a tax of 5 per cent on the full sales price. All the other designations covered by the exceptions cover a tax of 10 per cent on the full sales price. It accordingly follows that if any article is within more than one exception specified by section 904 (b), it is subject to a 10 per cent tax on its full sales price. It is only when it is within the exception relating to articles made of, or ornamented, mounted, or fitted with precious metals, or imitations thereof, or ivory, solely, that the tax at the rate of 5 per cent on the full sales price applies. Take, for example, purses. A

leather purse without ornaments of precious metal, etc., would not be within any of the exceptions and if sold for more than \$7.50 would be taxable on the excess of the sales price over that amount, under paragraph (5) of section 904 (a), simply as a purse. Next, take a leather purse with gold ornaments. The gold ornaments would bring it within the exception relating to articles ornamented with precious metals, etc., and it would, therefore, be subject to tax of 5 per cent of the full sales price. Now, take a purse made principally of fur, or of which fur is the component of chief value. It would be within the exception covering articles made of fur, etc., and would be subject to a tax of 10 per cent of the full sales price. Even though this latter purse were also ornamented with precious metals, it would still be subject to the same tax as an article made of fur, since the designation covering articles made of fur takes precedence over that covering articles ornamented with precious metals, etc.

In short, an article which is within any of the specific designations of section 904 (a) of the statutes is subject to the tax imposed thereby, unless it is covered by any of the exceptions enumerated in section 904 (b). If it is covered by the exception relating to articles ornamented with precious metals, etc., it is not subject to tax under section 904 (a), but to a tax of 5 per cent of the full sales price under section 905. If it is within either of the other exceptions, even though it is also within that relating to articles ornamented with precious metals, etc., it is subject to a tax of 10 per cent of the full sales price under section 900 of the statute.

RETURN AND PAYMENT OF TAX.

[¶ 884] **Sec. 904. (c)** The taxes imposed by this section shall be paid by the purchaser to the vendor at the time of the sale and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 502.

[¶ 885] **Sec. 502.** That each person receiving any payments referred to * * * shall collect the amount of the tax, if any, * * * from the person making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected * * * to the collector of the district in which the principal office or place of business is located.

The returns required under this section shall contain such information, and be made at such times and in such manner, as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.

[¶ 886] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, * * * may by regulation provide that any return required by Titles * * * IX * * * to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

[¶ 887] **Art. 33.** Accordingly, every person liable for the tax in respect to the sale of any of the articles enumerated in section 904, must make monthly returns under oath in duplicate (except that if the amount of the tax covered thereby is not in excess of \$10, such returns may be signed and acknowledged before two witnesses instead of under oath), and pay the taxes imposed on such articles to the collector of internal revenue for the district in which his principal place of business is located. Branch houses should in general make reports to the parent house, which is required to include the sales of the branch house in its return. An itinerant dealer should make return and pay the tax to the collector of the district where the sales are made. The returns shall be made

on Form 728 B. Instructions for preparing the return will be found on the back of the form. The returns are to be rendered and the tax paid on or before the last day of each month covering the transactions of the preceding month, the first return to cover all transactions from May 1, 1919, to May 31, 1919, both inclusive, and to be made on or before June 30, 1919. If the tax is not so paid, liability to the 5 per cent penalty and interest at the rate of 1 per cent for each full month, from the time when the tax becomes due will be incurred. The books of every person liable to the tax shall be open at all times for the inspection of examining internal-revenue officers, and each such person shall keep an account showing the amount of tax liability upon the sales of taxable articles and the credits or refunds claimed under article 8 of these regulations. As to penalty for failure to file return in time and penalties in general, see article 41. As to credits for overpayments, see article 35.

All rulings in conflict herewith are hereby revoked.

SALES SLIPS (T. D. 2965).

[¶ 888] Individual sale slips need not be held for more than ninety days.

—Taxpayers liable for the return and payment of taxes imposed by Section 904 of the Revenue Act of 1918 are not required to retain their individual sale slips for a longer period than ninety days, if they keep a summary record, under oath, of each month's taxable sales for two years in substantially the following form:

TAXABLE ITEM.....EXEMPTION \$.....
Record of Taxable Sales Month of....., 192...

Date	Quantity Sold	Amt. of Sales	Total Ex-emption	Taxable Amt.	Tax Paid by Customer	Tax Refunded to Customer	Net Tax Due Govt.
.....
.....
.....
.....
.....
.....
.....

I swear (or affirm) that the foregoing is a true statement of the taxable sales made by and the tax liability of.....

Name of taxpayer.

Signed.....

Sworn to and subscribed before me this.....day of....., 192...
.....

(State whether individual owner of business, member of firm, or if officer of corporation, or association, or duly authorized manager or agent, give title.)

All individual sale slips should be retained for a period of ninety days, in order that the representatives of the Treasury Department may make such detailed checks of the records as may be deemed necessary. (T. D. 2965, approved Jan. 29, 1920.)

EXTENSION OF EXISTING STATUTES.

[¶ 889] Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this act, and every person liable to any tax imposed by this act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other

person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 890] **Art. 34. Aids to collection of tax.**—In collecting the excise taxes the Commissioner has the benefit of all existing internal-revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed. As to returns, records, and examinations, see article 33 and article 37. See further sections 903 and 1312 (4) of the statute.

CREDITS AND REFUNDS.

[¶ 891] **Sec. 1310. (a)** That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled.

(b) Wherever in this act a tax is required to be paid by the purchaser to the vendor at the time of a sale, and such sale is made on credit, then, under regulations prescribed by the Commissioner, with the approval of the Secretary, the tax may, at the option of the vendor, be returned and paid by him to the United States as if paid to him by the purchaser at the time of the sale, and in such case the vendor shall have a right of action in any court of competent jurisdiction against the purchaser for the amount of the tax so returned and paid to the United States.

[¶ 892] **Art. 35. Credits and refunds.**—If a dealer overpays the tax due with one monthly return, he may take credit for the overpayment against the tax due with a succeeding return. See articles 7 and 8. If he sells on credit, he shall return and pay the tax as of the time of the sale, but may defer collection of it from the purchaser. If he does so he may, if necessary, sue the purchaser to recover the tax. See article 8 as to refunds to purchasers. See article 33 as to returns.

NOTE: T. D. 2991, approved March 13, 1920, contains instructions to collectors as to claims for refund or abatement of sales taxes and penalties on Form 751 and Blanket Form No. 47.

EXPORTS.

[¶ 893] **Section. 1310. (c)** Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed under the provisions of Titles * * * IX shall not apply in respect to articles sold * * * for export and in due course so exported. Under such rules and regulations the amount of any internal-revenue tax erroneously or illegally collected in respect to exported articles may be refunded. * * *

[¶ 894] **Art. 36. Exemption of export sales.**—The tax does not attach to the sale of an article which is either (1) shipped direct to a foreign destination by the dealer himself or (2) both (a) sold by him for export and (b) in due course so exported by the purchaser. Where a dealer at the time an article is sold or shipped (whichever is prior) has in his possession an order or contract of sale showing in writing (1) that the dealer is to export the article, or (2) that the purchaser is buying the article in order to export it prior to its being used, there is a presumption that the sale of the article is exempt from tax, as an export sale, and the dealer may, for a period of six months from the date of sale or shipment (whichever is prior), rely on such presumption. This temporary presumption becomes a permanent presumption upon the dealer's receiving and attaching to such order or contract, before the termination of such period of six months, due "proof of exportation" (see article 37) of such article. On the other hand, if, within such period of six months, the dealer has not received and attached to such order or contract, such "proof of exportation," then the temporary presumption that such sale is an export sale disap-

pears, and the dealer shall include a tax on the sale of such article in his return for the month in which such period of six months expires. The order or contract of sale and the "proof of exportation" must be preserved by the dealer in such a way as to be readily accessible for inspection by internal revenue officers. No sale shall be considered to be exempt from tax under section 1310 (c) of the act unless its character as an export sale has been established in accordance with the above provisions.

[§ 895] **Art. 37. Proof of exportation.**—By the term "proof of exportation" is meant: (1) An affidavit containing the following information: The name and address of the dealer, the name and address of the exporter (who, if not the dealer, must be a person who has purchased direct from the dealer), the respective dates of the sale or shipment (whichever is prior) and exportation of the article, the price for which purchased, the fact that the article has been exported by the dealer or original purchaser without having been used, the name of the place of foreign destination, the name and address of the carrier issuing the export bill of lading, and any further information necessary to identify the article sold with the article exported; and, (2) attached to such affidavit, a copy of the export bill of lading or a certificate by the agent or representative of the export carrier showing the exportation of the article, or, if exported by parcels post, a copy of the certificate of mailing.

FRACTIONAL PART OF CENT.

[§ 896] **Sec. 1313.** That in the payment of any tax under this act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

[§ 897] **Art. 38. When fractional part of a cent may be disregarded.**—In the payment of taxes, and in each step or computation necessary in determining the amount of the tax, a fractional part of a cent may be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

MEDIUM OF PAYMENT OF TAX.

[§ 898] **Sec. 1314.** That collectors may receive at par, with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[§ 899] **Art. 39. Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of excise taxes, provided such checks are collectible at par; that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check, (b) the amount of the check, (c) the amount of any cash, money order, or other instrument included in the same remittance, (d) the name of each person whose tax is to be paid by the remittance, (e) the amount of the payment on account of each person, and (f) the kind of tax paid.

[§ 900] **Art. 40. Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the

check should be returned through the depositary bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depositary bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the act of March 2, 1911.

PENALTIES.

[§ 901] **Sec. 1308.** (a) That any person required under Titles V, VI, VII, VIII, IX, X, or XII, to pay, or to collect, account for, and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment, or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return, or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return, or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall, in addition to other penalties provided by law, be liable to a penalty of the amount to the tax evaded or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or section 605 or 620 of this act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[§ 902] **Art 41. Penalties.**—Any person, including an officer or employee of a corporation and a member or employee of a partnership in the course of his duty, who fails to pay or collect a tax or to make a return, is liable to a penalty of \$1,000. If his failure is willful, or he otherwise tries to evade the tax, he is guilty of a misdemeanor and liable to a fine of \$10,000 and imprisonment for a year. If his failure is willful, he is also liable to the addition to the tax of a 100 per cent penalty, except that the penalty is 50 per cent for a fraudulent return. Section 3176 of the Revised Statutes, as amended by section 1317 of the revenue act of 1918, provides:

[§ 903] **Sec. 3176.** If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

MISREPRESENTATION OF TAX.

[¶ 904] **Sec. 1319.** That whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

[¶ 905] **Art. 42. Misrepresentation of tax.**—If a dealer misrepresents the tax, he is guilty of a misdemeanor and is liable to a fine of \$1,000 and to imprisonment for a year. This provision is designed, among other things, to prevent a dealer adding more than the amount of the tax to the price of an article and representing that the increase is due to the tax.

AUTHORITY FOR REGULATIONS.

[¶ 906] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act.

[¶ 907] **Art. 43. Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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[illegible]

TAX
ON
MOTION PICTURE
FILMS

SECTION 906, TITLE IX, OF THE
REVENUE ACT OF 1918

Law,
and Regulations No. 56 (Revised)

Indexed

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LAW,
REGULATIONS No. 56 (REVISED)
RELATING TO

TAX ON MOTION PICTURE FILMS
IMPOSITION OF TAX.

[¶ 908] **Sec. 906.** That on and after the 1st day of May, 1919, any person engaged in the business of leasing or licensing for exhibition positive motion-picture films containing pictures ready for projection shall pay monthly an excise tax in respect to carrying on such business equal to 5 per centum of the total rentals earned from each such lease or license during the preceding month. If a person owning such a film exhibits it for profit he shall pay a tax equivalent to 5 per centum of the fair rental or license value of such film at the time and place where and for the period during which exhibited. * * *

[¶ 909] **Article 1. Use of terms.**—In these regulations, for convenience, unless obviously inapplicable, the term “film” shall be held to mean a positive motion-picture film containing pictures ready for projection; “person” shall include partnerships, corporations, and associations, as well as individuals; “lease” shall include license, and any method of letting and acquiring the use of a film for exhibition, for which a charge is made; “lessor” shall include licensor, and any person granting to another the right to the use for exhibition of a film for profit; “distributor” shall be synonymous with lessor or licensor; “exhibitor” shall be synonymous with “lessee” or “licensee”; and “rental value” shall include “license value.”

[¶ 910] **Art. 2. Effective date.**—The tax is effective May 1, 1919, and attaches to sums accruing on account of exhibitions of films given on or after that date. See also article 11.

PERSONS LIABLE.

[¶ 911] **Art. 3. Lessors.**—All persons whose business it is, as principals, whether it is their sole or principal business or not, to grant to others the right to use films for exhibition, are liable to the tax. If leases, contracts, or agreements whereby the right to the use of films is conveyed are entered into by one person acting for and in the name of another, the principal is liable to the tax. One executing such leases, contracts, or agreements in his own name will be regarded as a principal and as liable to the tax, unless the contrary is shown. Lessors of positive motion-picture films are subject to tax upon amounts received from the leasing or licensing of films to States or political subdivisions thereof.

Owners.—One who, being the owner of a film or of any interest therein, himself exhibits such film for profit, is also subject to tax.

Lessees.—As to transfer of liability from lessors to lessees, by the statute under certain circumstances, see article 7. As to transfer of burden of tax by agreement, see article 8.

MEASURE OF TAX.

[¶ 912] **Art. 4. Lessors.**—The provision of the statute allowing the owner who exhibits a film to measure the tax by the fair rental value has no application to lessors. The tax to which a lessor is liable is 5 per cent of the total rentals earned.

Total rentals earned.—The total rental earned is not the net profit arising from each lease, etc., but is the gross sum due and payable to the lessor by each exhibitor upon each lease during the month, less the amounts represented by bona fide cancellations and reductions of rentals made in the ordinary and regular course of business, but with no reductions on account of expenses, losses, bad debts, etc.

Deductible items.—Credits due to (a) cancellation because of the failure of the lessor to perform contractual obligations (as, for instance, failure to provide or deliver a film contracted for), or to (b) reduction of the rental charge which is predicated upon a reasonable basis, when in good faith actually given in accordance with a recognized trade usage (as, for instance, in case of failure of a film to attract sufficiently profitable audiences) are deductible, and allowances therefor may be made in computing the tax. If the credit is given after tax on the amount due under the original contract has been paid, deduction thereof may be made in the return for the month during which the credit is given.

Bad debts and expenses.—The tax being measured by the amount earned, whether actually received or not, no allowances or deductions may be made for losses or unpaid accounts charged off. Neither will any credit or deduction from gross compensation be allowed to be made for any tax or other expense incurred by the lessor, or exhibitor, such as cost of operations, commissions, advertising, or other charges, either general or special.

[¶ 913] **Art. 5. Owner-exhibitors.**—An exhibitor who is also an owner of a film, and who exhibits the film for profit, must pay a tax equivalent to 5 per cent of the fair rental value of the film were it leased or licensed for exhibition.

The fair rental or license value of a film exhibited by an owner for profit shall ordinarily be held to be represented by the net profits he derives therefrom, which shall be determined by deducting from his gross receipts his reasonable expenses or allowances for services (but no deduction will be permitted for such items as expenses of production, upkeep, or replacement of films); but should his return show that such net profits do not amount to 33 1/3 per cent of his gross receipts, he shall accompany his return with a statement in detail showing the items entering into the expenses and allowances charged against such receipts. This ruling applies to cases where the owner exhibits or intends to exhibit the film over an extended period, as distinguished from a limited period for advertising or other purposes.

The fair rental or license value of a film exhibited by an owner for a limited period as a part of an advertising or other program intended to enhance the future rental or license value of the film shall be based on the actual rental received for the film at the expiration of that period by the owner or by the person purchasing State or other Territorial rights therein. An owner-exhibitor under such circumstances shall accompany his return with a statement showing the actual amounts for which the film has been leased, and in what city or cities and at what theater or theaters it is to be shown.

[¶ 914] **Art. 6. Lessees.**—When liability to the tax is transferred by operation of law from the lessor to the lessee (see article 7) the same allowances for cancellations or reductions of rental charges may be made as when the tax is payable by the lessor.

TRANSFER OF BURDEN OF TAX.

[¶ 915] **Sec. 906.** * * * If any such person has, prior to December 6, 1918, made a bona fide contract with any person for the lease or licensing, after the tax imposed by this section takes effect, of such a film for exhibition for profit, and if such contract does not permit the adding of the whole of the tax imposed by this section to the amount to be paid under such contract then the lessee or licensee shall, in lieu of the lessor or licensor, pay so much of such tax as is not so permitted to be added to the contract price. * * *

[¶ 916] **Art. 7.** Where a contract was made prior to December 6, 1918, conveying to an exhibitor the right to the use of a film on or after May 1, 1919, the liability for the whole or such portion of the tax as can not, under the contract, be added to the amount to be paid under such contract is on the exhib-

itor, who shall make returns and pay tax on rentals due and payable under the contract on account of exhibitions given on and after May 1, 1919, in the manner of a lessor or licensor, as indicated by article 11 of these regulations. The lessor or licensor shall, on or before the last day of June, 1919, file with the collector a statement, in duplicate, showing the tax liability of the exhibitor. If the lessor or licensor is himself subject to tax, such statement shall be filed with his return for the month of May, 1919. A separate statement shall be made in the case of each exhibitor. The collector will preserve one copy of each statement for use in the determination by him whether returns required of lessees and licensees are duly made. The other copies received during each month will be forwarded together to the collector of internal revenue for auditing purposes.

[¶ 917] Art. 8. **Charging tax to lessee.**—Except in circumstances indicated in article 7, the law requires the lessor of leased films to pay the tax. It does not, however, prohibit the charging of the tax to the exhibitor by the distributor. Where the tax is charged to the exhibitor as a separate item, the tax will be based upon the amount charged for the use of the film only, and not upon the combined total including the tax. Where, however, a lessor does not separately bill the tax to the exhibitor, but advances his price to cover the tax, the tax must be measured by the full amount of such advanced price. With respect to leases entered into before December 8, 1919, which do not permit increases in the amount to be paid under the lease so as to cover the tax and the transferring of liability in such cases, see article 7.

TAX IN LIEU OF OTHER TAXES.

[¶ 918] Sec. 906. * * * The tax imposed by this section shall in lieu of the tax imposed by subdivisions (c) and (d) of section 600 of the Revenue Act of 1917.

[¶ 919] Art. 9. **Tax in lieu of other taxes.**—While the new tax is in lieu of taxes imposed by the Act of October 3, 1917, this merely means that no tax shall be asserted under the prior statute on any sale or lease of a moving-picture film occurring or executed on or after May 1, 1919, the effective date of the new tax. Persons otherwise liable to the tax imposed by the Act of February 24, 1919, are not relieved of such liability by reason of having paid the tax imposed by the prior Act. Neither does payment of the new tax entitle the taxpayer to refund of any taxes paid under the earlier statute.

LEASE AT LESS THAN FAIR MARKET PRICE.

[¶ 920] Sec. 901. That if any person * * * leases or licenses for exhibition any positive motion-picture film containing a picture ready for projection, and, whether through any agreement, arrangement, or understanding, or otherwise, * * * leases or licenses such article at less than the fair market price obtainable therefor, either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person, or (b) with intent to cause such benefit, the amount for which such article is * * * leased or licensed shall be taken to be the amount which would have been received from the * * * lease, or license of such article if * * * leased, or licensed at the fair market price.

[¶ 921] Art. 10. This section will be regarded as intended to cover the possible attempt by a lessor to disguise the compensation received by him from the exhibition of a film; thus, if a lessor, through any device contrives to lease a film at less than the fair market price or rental, and he derives or has the intent to derive some other benefit of any kind from the transaction, the tax shall be based on the fair market price or rental, and not that named in the lease. If such method is followed for the purpose of evading or defeating the tax liability, penalty will also be incurred.

RETURN AND PAYMENT OF TAX.

[¶ 922] **Sec. 903.** That every person liable for any tax imposed by section * * * 906 shall make monthly returns under oath in duplicate and pay the taxes * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. * * *

[¶ 923] **Section 1309** of the Act also provides that the Commissioner, with the approval of the Secretary,

may by regulation provide that any return required by Titles * * * IX * * * to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

[¶ 924] **Art. 11. Return.**—Any person engaged in the business of leasing or licensing films, and each owner who exhibits his film for profit, must make return each month in duplicate and under oath (except that if the amount of the tax covered thereby is not in excess of \$10 such return may be signed or acknowledged before two witnesses instead of under oath) and pay the tax upon the total rentals earned, or (in the case of an owner-exhibitor) upon the fair rental value of the film for the period or periods of the preceding month, during which exhibitions were given, to the collector of internal revenue for the district in which his principal place of business is located, in accordance with these regulations. But see below as to taxpayer's records.

Date when due.—The return for each month is to be rendered and the tax paid on or before the last day of the succeeding month. If sent by mail, the return and remittance should be posted in time to reach the collector on the last day of such month in ordinary course of mails.

Branches.—Transactions of branches should be included in the returns rendered by the principal office.

Receivers, etc.—The receiver or trustee in bankruptcy of a lessor or owner and exhibitor conducting a business under court order is liable to the tax.

Taxpayer's records.—Any taxpayer whose books are so kept that they accurately reflect the business done with each lessee, or with each person dealt with, on a weekly basis, may render his return in groups of as many weeks as have their endings in each calendar month, but the total business done during each week must be correctly shown and added so as to indicate the total business done for the several weeks ending in the particular calendar month.

Forms.—The returns should be made on Form 728A. Instructions for preparing the return will be found on the back of the form.

Inspection of books.—The books of every person liable to the tax shall be open at all times for inspection by examining internal-revenue officers.

Payment.—Remittance of the amount of the tax should accompany the return as made. See article 15.

EXTENSION OF EXISTING STATUTES.

[¶ 925] **Sec. 1305.** That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 926] Art. 12. **Aids to collection of tax.**—In collecting the excise taxes the Commissioner has the benefit of all existing internal-revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed.

CREDITS AND REFUNDS.

[¶ 927] Sec. 1310. (a) That in the case of any overpayment or overcollection of any tax imposed by section 628 or 630 or by Title V, Title VIII, or Title IX, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

[¶ 928] Art. 13. If a taxpayer overpays the tax due with one return, he may take credit for the overpayment against the tax due with the succeeding return.

[¶ 929] Art. 14. **Claims for refund.**—For procedure with reference to claims for refund, see sections 3220 and 3225 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, and Regulations No. 14 (revised).

MEDIUM OF PAYMENT OF TAX.

[¶ 930] Sec. 1314. That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[¶ 931] Art. 15. **Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of excise taxes, provided such checks are collectible at par; that is, for their full amount without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instrument included in the same remittance; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

[¶ 932] Art. 16. **Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction

can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. See chapter 191 of the Act of March 2, 1911.

MISREPRESENTATION OF TAX.

[¶ 933] Sec. 1319. That whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

[¶ 934] Art. 17. If a lessor or other person in the lease of a film misrepresents the tax, he is guilty of a misdemeanor and is liable to a fine of \$1,000 and to imprisonment for a year. This provision is designed, among other things, to prevent a lessor from adding more than the amount of the tax to the sum charged for the use of a film and representing that the increase is due to the tax.

PENALTIES.

[¶ 935] Section 3176 of United States Revised Statutes, as amended by Section 1317 of Revenue Act of 1918:

Sec. 3176. * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

[¶ 936] Sections 903, 1308, and 1319 of the Revenue Act of 1918:

Sec. 903. * * * If the tax is not paid when due, there shall be added as a part of the tax a penalty of 5 per centum, together with interest at the rate of 5 per centum for each full month, from the time when the tax becomes due.

[¶ 937] Sec. 1308. (a) That any person required under Titles * * * IX * * * to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for

and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended * * *.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 938] **Sec. 1319.** That whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

AUTHORITY FOR REGULATIONS.

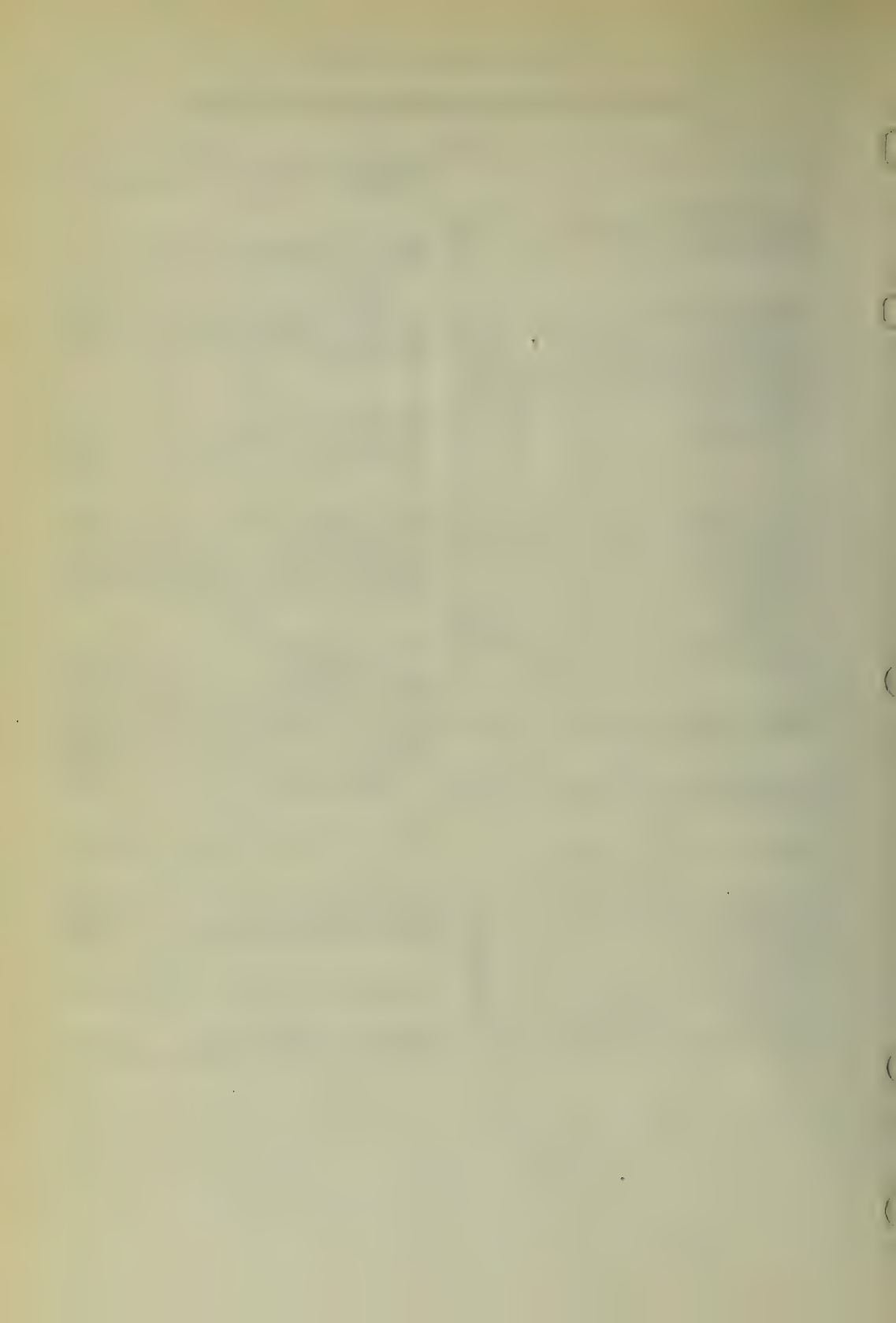
[¶ 939] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

[¶ 940] **Art. 18. Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated, and all rulings inconsistent herewith are hereby revoked.

PAUL F. MYERS,
Acting Commissioner of Internal Revenue.

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EXCISE TAXES

ON

TOILET and MEDICINAL PREPARATIONS

SECTION 907, TITLE IX, OF THE
REVENUE ACT OF 1918

Law,
Regulations 51 (Revised), and
Treasury Decisions

Indexed

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LAW,
REGULATIONS No. 51 (REVISED),
AND TREASURY DECISIONS
RELATING TO

EXCISE TAXES ON TOILET AND MEDICINAL PREPARATIONS

IMPOSITION OF TAX.

[¶ 941] **Sec. 907.** (a) That on and after May 1, 1919, there shall be levied, assessed, collected and paid (in lieu of the taxes imposed by subdivisions (g) and (h) of section 600 of the Revenue Act of 1917) a tax of 1 cent for each 25 cents or fraction thereof of the amount paid for any of the following articles when sold by or for a dealer or his estate on or after such date for consumption or use: * * *

[¶ 942] **Article 1. Effective date.**—The tax is effective as to all sales made on and after May 1, 1919, superseding the manufacturer's tax imposed by subdivisions (g) and (h) of section 600 of the Revenue Act of 1917, which tax remains in force until and including April 30, 1919.

[¶ 943] **Art. 2. Basis of tax.**—The tax is measured by the price for which the article is sold. It is on the actual sales price and not on the list price, where that differs from the sales price. The tax is payable in respect to a sale made whether or not the purchase price is actually collected. A discount for cash or other discount made subsequently to the sale can not be deducted in computing the price for the purpose of the tax. Commissions to agents or others and other expenses of sale are not deductible from the price. If articles are sold and the delivery charges to point of delivery are paid by the purchaser as a specific item, or if the articles are sold delivered at a sum less delivery charges to be paid by the purchaser, such charges need not be included as part of the price of the goods; but if the dealer sells goods at a delivered price and himself pays the delivery charges, he is not entitled to make any deduction on account of the inclusion in the price of delivery charges.

[¶ 944] **Art. 3. Who is the dealer.**—For the purpose of the tax and as used in these regulations the term "dealer" means any individual, partnership, association, or corporation engaged in the business of selling for profit any of the enumerated articles to a purchaser for consumption or use and the estate of such a dealer. Thus, a dealer may be a manufacturer, jobber, wholesaler, retailer, mail-order house, installment house, trustee in bankruptcy, receiver, pawnbroker, or peddler, if the sale is for consumption or use; but a casual sale, not in the course of trade or business, by an individual of any of the enumerated articles does not constitute the vendor a "dealer" within the meaning of this section. An auctioneer or broker is a dealer within the meaning of the act in respect to all sales made by him of articles in which he has title, but not in respect to articles which he is selling as an agent.

[¶ 945] **Art. 4. Giving of premiums.**—The giving of so-called "premiums" in return for wrappers, labels, coupons, trading stamps, or other scrip delivered or sold in connection with the sale of a commodity is a sale by a dealer within the meaning of this section if the premium is within the class of enumerated articles. In such cases the tax attaches at the time title in the premium passes to the person receiving it in exchange for such scrip, is to be computed on the fair market value of the premium at such time, and must be collected from the person to whom the premium is given.

[¶ 946] **Art. 5. Consumption or use.**—An article is sold for "consumption or use" within the meaning of this section if it is sold for any other pur-

pose than to be resold, leased, or otherwise disposed of for profit, whether or not after change in form by process of manufacture. Unless the purchaser is a wholesaler, retailer, or manufacturer customarily engaged in the business of selling or further manufacturing the article in respect to which the applicability of the tax is in question, the sale to such purchaser will be deemed to be for consumption or use, unless the contrary is clearly shown.

Where a dealer sells toilet waters, hair tonics, or other preparations, taxable under section 907, to a barber for use or sale to patrons, the barber is the consumer within the meaning of the act, and the dealer must affix the necessary proprietary stamps and collect the tax from the purchaser. As to all unstamped articles purchased under certificate, on hand at the time of the promulgation of these regulations, the barber must affix the proper stamp and collect and return the tax when such articles are sold to a customer.

A dealer, druggist, or person who breaks an original package of a taxable article (1) to use the article or any part thereof in compounding medicines, whether or not on the prescription of a physician, or (2) to dispense any part of the article less than the whole at his soda fountain or place of business, is the consumer within the meaning of the act, and must affix the proper stamps to the original package or container on the basis of the cost to himself, and must himself pay the tax.

When a dealer, druggist, or person breaks an original package of a taxable article, and sells any part thereof in a separate package or container, as distinguished from dispensing it at his place of business, the purchaser is the consumer and must pay the tax, and the vendor must affix the proper stamps.

When a dealer, druggist, or person sells a taxable article on a physician's prescription, whether in the original container or not, the purchaser is the consumer, and the vendor must affix the proper stamps to the container or package in which the article is sold.

Taxable articles given away as free samples are not subject to tax if a notation is made on the package that the article is not to be sold for consumption or use, but is a free sample.

[¶ 947] Art. 6. **Articles taxpaid under other acts.**—(a) The tax is on the sale by or for a dealer or his estate, when any of the enumerated articles are sold for consumption or use, whether or not a tax under any other law has been previously paid on such articles.

(b) Articles in respect to which the manufacturer's excise tax imposed by section 600 of the Revenue Act of 1917 has been paid are taxable under section 907 when sold by or for a dealer or his estate for consumption or use.

[¶ 948] Art. 7. **Amount of the tax.**—The amount of the tax is 1 cent for each 25 cents or fraction thereof of the amount paid by the purchaser for the article, and the vendor, after exactly determining the selling price of each article, must affix thereto proprietary stamp or stamps of the proper denomination denoting the correct amount of the tax. These two amounts being distinct entities, must be clearly shown to the purchaser to be the price of the article sold and the amount of the tax due thereon.

The tax is based upon the selling price of each taxable article sold whether two or more articles of the same or different kinds are sold at the same time, except that where two or more taxable articles of the same kind are prepared and put up by the manufacturer in a container, carton, or sealed package for sale as an original package and are sold by the vendor in this form, the tax attaches to the selling price of such package as a unit of sale.

For example, if a purchaser buys a tube of tooth paste for 35 cents and a bottle of perfume for 65 cents, the tax on the tooth paste is 2 cents and on the

perfume 3 cents, a total of 5 cents. The tax is not 4 cents computed upon \$1, the total amount paid by the purchaser. If toilet powder sells for 10 cents a box and a purchaser buys one box, the tax is 1 cent; if two boxes are bought the tax is 2 cents, 1 cent for each article, although the total amount paid is 20 cents, and if he buys three boxes the tax is 3 cents. If three boxes are sold for 25 cents, the tax is 3 cents, 1 cent for each article, and not 1 cent on the basis of the 25 cents paid. If six taxable articles of the same kind selling singly at 10 cents apiece are put up by the manufacturer in a container, carton, or sealed package for sale as a unit and are sold by the vendor as an original package for 50 cents, the tax is 2 cents, the package being the unit of sale to the purchaser.

Proper stamps have been provided for the purpose of paying the tax, and are of the following denominations: 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, and 40 cents. They have been placed on sale in the offices of the collectors of internal revenue and post offices in each collection district.

An article sold for 1 cent to 25 cents requires a 1-cent stamp;

An article sold for 26 cents to 50 cents requires a 2-cent stamp;

An article sold for 51 cents to 75 cents requires a 3-cent stamp;

An article sold for 76 cents to \$1 requires a 4-cent stamp;

An article sold for \$1.01 to \$1.25 requires a 5-cent stamp, etc.

(See articles 20 and 21 for further information as to the method of paying this tax.)

[¶ 949] Art. 8. **Sales to the United States or a State.**—The tax imposed by section 907 does not apply to sales to the United States Government or to sales made to a State or political subdivision thereof for use in carrying on its governmental operations.

TOILET PREPARATIONS.

[¶ 950] Sec. 907. (a) (1) Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, tooth and mouth washes, dentifrices, tooth pastes, aromatic cachous, toilet powders (other than soap powders), or any similar substance, article, or preparation by whatsoever name known or distinguished, any of the above which are used or applied or intended to be used or applied for toilet purposes; * * *

[¶ 951] Art. 9. **Toilet preparations.**—Section 907 (1) includes all preparations which are used or applied or intended to be used or applied for toilet purposes or used in connection with the bath, care of the body, or applied to the clothing as a perfume or to the body as a toilet article. Concentrated extracts and essences are taxable unless sold for the purpose of further manufacturing toilet articles. Bay rum and witch-hazel are taxable as toilet articles. A facial cream which is nonlathering and may be used as a shaving soap and also as a cold cream, and shampoo oils and liquids, not containing saponaceous matter, are taxable under section 907 as toilet preparations. Toilet soap, whether in the form of a liquid, semiliquid, paste, flake, powder, or cake, and whether medicated or not, is taxable under section 900, when sold by the manufacturer, producer, or importer.

[¶ 952] Art. 10. **Containers.**—The tax is upon the combined price of the container and its contents. The containers of taxable articles constitute a part of the article sold when sold filled with the taxable preparation.

MEDICINAL PREPARATIONS.

[¶ 953] Sec. 907. (a) (2) Pills, tablets, powders, tinctures, troches or lozenges, sirups, medicinal cordials or bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except those taxed under section 628 of this act),

essences, spirits, oils, and other medicinal preparations, compounds, or compositions (not including serums and antitoxins), upon the amount paid for any of the above as to which the manufacturer or producer claims to have any private formula, secret, or occult art for making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which (if prepared by any formula, published or unpublished) are held out or recommended to the public by the makers, vendors, or proprietors thereof as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body: Provided, That the provisions of this section shall not apply to the sale of vaccines and bacterines which are not advertised to the general lay public, nor to the sale by a physician in personal attendance upon a patient of medicinal preparations not so advertised.

[¶ 954] Art. 11. Medicinal preparations: Articles included.—A medicine, medicinal preparation, or specific is a preparation of any substance whatever intended to be used or applied for the prevention, cure, or mitigation of pain or disease in either the human or the animal body. Sprays to be applied to cows, horses, and other animals to keep off flies, vermin, etc., are not taxable.

[¶ 955] Art. 12. Medicinal preparations: Scope of tax.—Any of the enumerated articles are taxable if—

(a) The manufacturer or producer claims to have any private formula, secret, or occult art for making or preparing the same; or

(b) The manufacturer or producer has or claims to have any exclusive right or title to the making or preparing the same; or

(c) They are prepared, uttered, vended, or exposed for sale under any letters patent or trade-mark; or

(d) They are prepared by any formula, published or unpublished, and are held out or recommended to the public by the makers, vendors or proprietors thereof (1) as proprietary medicines or medicinal proprietary articles or preparations or (2) as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body.

The above conditions are in the alternative. Thus, for example, if an article is made or prepared by a manufacturer claiming to have a private formula, secret or occult art for it, it is taxable, even though it is not prepared, uttered, vended, or exposed for sale under any letters patent or trade-mark, and it is not held out or recommended to the public as a proprietary medicine or medicinal proprietary article or preparation, or as a remedy or specific for any disease or affection of the human or the animal body.

[¶ 956] Art. 13. Medicinal preparations: Under formula.—Where medicinal preparations are sold under labels which do not indicate that the formula is published they will be considered to be prepared under private formulas, unless proof is submitted that the formula is not secret.

[¶ 957] Art. 14. Medicinal preparations: Under exclusive right.—If an article is advertised under the name of the manufacturer, or any name in the possessive case is used on the label or in the literature describing the medicinal preparation, or the name of the manufacturer is made a part of the name or title, or any intimation is otherwise given that the article is of distinctive origin, the tax is imposed. If an article is advertised under a coined word, the exclusive use of which is claimed by one manufacturer or dealer, such coined word may or may not be a trade-mark, but it indicates the distinctive origin of the article and renders the sale thereof taxable, whether it is applied to one or more articles sold by such manufacturer or dealer.

[¶ 958] Art. 15. Medicinal preparations: Under letters patent or trade-mark.—Medicinal preparations sold under letters patent are taxable. A gen-

eral trade-mark, as distinguished from a coined name or word, applied by a manufacturer or dealer to his various products does not, of itself, render such product taxable, but where a medicinal preparation is sold under what appears to be or what is intended to be a trade-mark appropriated to the particular article, the tax attaches. The coined name for a particular medicinal preparation, to distinguish it from the same or like preparations of other manufacture, is a trade-mark under section 907, and amounts to a holding out of that preparation as proprietary.

[¶ 959] Art. 16. Medicinal preparations: held out.—(a) The taxability of a medicinal preparation is determined by the manner in which it is prepared or the way in which it is put upon the market. "Held out or recommended" includes representation by any means, personal canvass and statements on the labels, in pamphlets and in advertisements, or otherwise. A holding out or recommendation intended for physicians only is a holding out to the public.

(b) Any substance or preparation sold or held out to the general lay public as suitable for use in the preparation by the consumer of a remedy or medicinal preparation for use is taxable, even though not capable of use as a medicine without further preparation.

(c) The tax applies to a medicinal preparation held out by the producer to the public as a proprietary medicine or as a remedy for disease, even if it is an uncompounded natural substance merely dried or refined.

(d) Many articles or substances which are not usually considered as belonging to *materia medica* may become taxable medicinal preparations by being held out or advertised as remedies for diseases affecting the human or the animal body; thus, boric acid when held out as a medicinal preparation or sold under a trade-mark as a medicinal preparation is taxable, and licorice put up in sticks, lozenges, or other forms suitable for medicinal purposes and sold under a trade-mark is subject to the tax. (See Art. 15.)

(e) Cough drops sold in packages or cartons having the words "cough drops," "cold tablets," "throat lozenges," "throat pastilles," "troches" thereon, or otherwise held out as a remedy or specific, are taxable under section 907. Cough drops sold in bulk and held out or recommended as a remedy or specific are taxable. Candy cough drops, such as lemon, lime, and hoarhound drops, sold in bulk by the pound or otherwise, and not held out or recommended in any manner as a remedy or specific, are not taxable under section 907, but are taxable as candy under section 900, when sold by the manufacturer, producer, or importer.

(f) A preparation, otherwise taxable, is not exempt from tax when it is sold on a physician's prescription, nor when sold in a container upon which the original label does not appear.

Preparations Not Taxable.

[¶ 960] Art. 17. Preparations not taxable.—(a) Preparations made in accordance with formulas contained in the United States Pharmacopoeia and National Formulary by pharmaceutical manufacturers, when not held out or recommended as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics, are not subject to the tax, but if so held out or recommended they are taxable, although not identified by any name, trade-mark, or otherwise.

(b) Products whose primary and principal use is a food, either for persons or animals, as distinguished from medicinal preparations used as a remedy or specific, are not taxable even though held out as having incidental

remedial properties, provided such articles do not contain a recognized drug. This includes products recommended as a food for the sick and convalescent or preparations commonly known as stock food, mixed feeds, chicken feeds, and like preparations. However, any such article which contains a recognized drug as one of its ingredients is taxable.

(c) Poisons and exterminators of rodents and insects, insecticides, disinfectants (other than those manufactured and sold for use in the treatment of wounds or as cleansers of any portion of the human or the animal body) are not medicines or medicinal preparations, compounds, or compositions within the meaning of this section, and are not taxable.

(d) Vaccines and bacterines which are not advertised to the general lay public, and all serums and antitoxins, are specifically exempt from taxation. Chemical preparations, such as serums, vaccines, antitoxins, and salvarsan, when prepared by open formula and advertised only to the medical profession, the labels and directions indicating use only by the medical profession, are exempt from tax.

(e) Natural mineral waters and table waters (in their natural state except for filtration) and artificial mineral waters (carbonated or not carbonated) and other carbonated waters, produced and sold primarily for use as beverages, although they are held out or advertised as having incidental remedial qualities, are not taxable as medicinal preparations under section 907, but are taxable as beverages under section 628.

(f) Medicinal preparations, whether or not sold under proprietary names, which are not held out or advertised for sale to the general lay public, but which are sold only to the medical profession, and are of such a character that they can be used only by physicians, dentists, and veterinarians in the personal treatment of diseases or affections of the human or the animal body, are not subject to tax under section 907.

Sales by Physician.

[¶ 961] **Art. 18. Sales by physician.**—The sale by a physician in personal attendance upon a patient of medicinal preparations not advertised to the general lay public is not taxable. The sale by the physician must be when he is in personal attendance upon the patient and of medicine actually intended for consumption or use by the patient. The sale of such articles by a druggist upon prescription of a physician is not exempt. If the article is held out or advertised to the general lay public it is taxable even when sold by a physician in personal attendance on a patient. (See Art. 16.)

Printed Directions or Autograph.

[¶ 962] **Art. 19. Printed directions or autograph.**—(a) Printing on the labels the directions and indications for use, dosage, and other similar matter will not alone render preparations made under a standard formula taxable, provided the preparation is not held out or recommended as a proprietary preparation or as a remedy or specific.

(b) The autographic name of the company or manufacturer of a medicinal preparation, as distinguished from the possessive use thereof, printed on the label is not a trade-mark under section 907, and does not amount to a holding out of a preparation as proprietary. (See Art. 14.)

COLLECTION OF TAX.

[¶ 963] **Sec. 907. (b)** The taxes imposed by this section shall be collected by whichever of the following methods the Commissioner may deem expedient: (1) By stamp affixed to such article by the vendor, the cost of which shall be reimbursed to

the vendor by the purchaser; or (2) by payment to the vendor by the purchaser at the time of the sale, the taxes so collected being returned and paid to the United States by such vendor in the same manner as provided in section 502.

[¶ 964] Art. 20. **Collection of tax.**—(a) Except as provided in paragraph (b), the tax shall be collected by the affixing by the vendor of the requisite stamps to the articles sold as provided in Article 7, the vendor being reimbursed by the purchaser for the cost of the same, in which case no return by the dealer of the taxes collected is required.

(b) Where by reason of the form in which a taxable article is sold or for other satisfactory reason, the Commissioner of Internal Revenue shall, upon application, deem it expedient, the tax may be collected by the payment of the same to the vendor by the purchaser at the time of the sale, the taxes so collected being returned and paid to the United States each month by such vendor in the manner provided in section 502. A special form, No. 728-C, has been prepared for use in making monthly return in such cases, which can be used, however, only with permission of the Commissioner of Internal Revenue. Any dealer desiring such permission may apply therefor by letter either direct to the Commissioner, in Washington, D. C., or through any Collector of Internal Revenue, stating his reasons for desiring to return the tax in this manner. Each application will be determined upon its own merits.

AFFIXING AND CANCELING STAMPS.

[¶ 965] Sec. 1104. That whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: Provided, That the Commissioner may prescribe such other method for the cancellation of such stamps as he may deem expedient.

[¶ 966] Art. 21. **Affixing and canceling stamps.**—The stamp must be affixed to the article, carton, bottle, or container in which it is prepared or put up for sale by the manufacturer and sold to the consumer, or when sold from bulk, to the carton, bottle, or container in which sold by the vendor to the consumer, so that upon opening the same the stamp will be destroyed. Each stamp affixed to a taxable article must be canceled in such a manner as to prevent the further use of the same. The initials or the name of the vendor together with the date when the stamp was affixed or canceled must appear upon the canceled stamp. This shall constitute the act of cancellation of the stamp. Stamps may be affixed and canceled by the vendor in advance of the sale, provided the selling price and the tax thereon be clearly indicated to the purchaser in such manner as not to confuse him. Proprietary stamps prepared and distributed under authority of section 22, act of October 22, 1914, can not legally be used for payment of taxes imposed by section 907 of the act of February 24, 1919.

Redemption of Stamps.

[¶ 967] Art. 22. **Redemption of stamps.**—Unused stamps may be redeemed on claim executed on Form 46, presented by the owner, or his authorized representative, accompanied by the stamps. Such claims should show that the claimant is the owner of the stamps presented, that they were purchased from the Government within two years of filing claim, and that the stamps are unused, explaining any cancellation or appearance of having been used. In case of stamps affixed in error to articles not taxable or in excess to articles taxable and unsold, the claims should be accompanied by the stamps, which should be detached in the presence of a deputy collector, or, if they can not be detached and filed, by a showing of that fact and by the deputy collector's certificate to their mutilation or destruction by him, and his indorsement thereon that claim was filed. In case of sale made where the articles or sales were not

taxable or were stamped in excess, refund may not be made except to the buyer or taxpayer. There is no authority for the redemption of stamps lost or stolen, and no provisions for restamping free of charge where stamps become lost from articles or where it becomes necessary to repack. In case it is desired to repack articles to which stamps have been affixed and which have not yet been sold to consumer or user, redemption may be had of the stamps representing the taxes that did not accrue, the stamps to be redeemed in such case to be detached in the presence of a deputy collector.

EXTENSION OF EXISTING STATUTES.

[¶ 968] **Sec. 1305.** That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary, he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 969] **Sec. 1400.** (b) * * * In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act. * * *

[¶ 970] **Art. 23. Aids to collection of tax.**—In collecting the excise taxes the Commissioner has the benefit of all existing internal-revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed.

EXPORTS.

[¶ 971] **Sec. 1310.** (c) Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the taxes imposed under the provisions of Titles VI, VII, or IX shall not apply in respect to articles sold or leased for export and in due course so exported. * * *

[¶ 972] **Art. 24. Sale of articles for export not taxable.**—The tax imposed by section 907 is a tax upon the sale to the consumer of the articles enumerated, and, therefore, does not attach to the sale by the vendor for export. (See Art. 26.)

[¶ 973] **Art. 25. Sale of imported articles taxable.**—If the articles enumerated in section 907 are imported they are subject to tax when sold to the consumer.

TRADE WITH POSSESSIONS OF UNITED STATES.

[¶ 974] **Sec. 1304.** That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of such islands: Provided, That there shall be levied, collected, and paid in such islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in such islands upon like articles there manufactured; and such articles going into such islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States.

[¶ 975] **Art. 26. Trade with possessions of United States.**—A sale which results in the shipment of articles into the United States from the Virgin Islands is taxable to the same extent as a sale of articles within the United States. Articles going into the Virgin Islands from the United States are free from tax in the United States. The same rules apply to trade with Porto Rico and the Philippine Islands. (See section 1000 of the Revenue Act of 1917, and section v of the act of Aug. 4, 1909, as amended by section iv, subdivision c, of the act of Oct. 3, 1913.) The tax attaches, however, to articles shipped to other possessions of the United States, including the Canal Zone.

PENALTIES.

[¶ 976] **Art. 27. Penalties.**—The act provides:

Sec. 1307. * * * All administrative and penalty provisions of Title XI of this Act, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be paid by stamp.

[¶ 977] **Sec. 1102.** That whoever— * * *

(b) Consigns or ships, or causes to be consigned or shipped, by parcel post any parcel, package, or article without the full amount of tax being duly paid;

(c) Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid;

(d) Makes use of any adhesive stamp to denote any tax imposed by this title without canceling or obliterating such stamp as prescribed in section 1104;

Is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense.

[¶ 978] **Sec. 1103.** That whoever—

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeit stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Willfully removes, or alters the cancellation, or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article;

Is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, and any such reused, canceled, or counterfeit stamp and the vellum parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States.

[¶ 979] **Sec. 1308.** (a) That any person required under Titles * * * IX * * * to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade

such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: * * *.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 980] **Sec. 1319.** That whoever in connection with sale * * * or offer for sale * * * of any article, or for the purpose of making such sale * * * makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold * * * or offered for sale * * * consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

AUTHORITY FOR REGULATIONS.

[¶ 981] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act. * * *

[¶ 982] **Art. 28. Promulgation.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

WM. M. WILLIAMS,
Commissioner of Internal Revenue.

CAPITAL STOCK TAX

SECTION 1000, TITLE X, REVENUE ACT OF 1918

Law,
Regulations No. 50 (Revised), Treasury
Decisions, Digest of Cases and
Counsel's Explanation of Use of
Exhibits in Making Returns

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LAW,
REGULATIONS No. 50 (REVISED), TREASURY DECISIONS,
DIGEST OF CASES, AND COUNSEL'S EXPLANATION
OF USE OF EXHIBITS IN MAKING RETURNS
RELATING TO
CAPITAL STOCK TAX

EFFECTIVE DATE

[¶ 983] **Sec. 1000 (a).** That on and after July 1, 1918, in lieu of the tax imposed by the first subdivision of section 407 of the revenue act of 1916— * * *

[¶ 984] **Article 1. Due date of tax.**—The tax became effective as of July 1, 1918, and is to be paid annually in advance for each year beginning July 1, in lieu of the capital stock tax imposed by the Revenue Act of 1916. The tax for the year ending June 30, 1919, although necessarily not payable in advance, was payable upon notice and demand by the collector. See article 36. Special taxes, of which this is one, become due on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax is for one year, and in the latter case it is for the period from the first day of the month in which the liability to the special tax is incurred to the first day of July following. But see article 26. No portion of the tax is refundable where a corporation ceases to do business during the year.

CORPORATIONS DEFINED AND DISTINGUISHED.

[¶ 985] **Section 1.** That when used in this Act—

* * * * *

The term "corporation" includes associations, joint-stock companies, and insurance companies;

The term "domestic" when applied to a corporation or partnership means created or organized in the United States;

The term "foreign" when applied to a corporation or partnerships means created or organized outside the United States;

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

[¶ 986] **Art. 2. Corporations.**—The term "corporation" includes associations, joint-stock companies, whether created by statute or by contract, and insurance companies, but not partnerships, properly so called, and whether or not organized for profit or having a capital stock represented by shares.

[¶ 987] **Art. 3. Associations and joint-stock companies.**—Associations and joint-stock companies include organizations, by whatever name known, which act or do business in an organized capacity, whether created under and pursuant to State laws, agreements, declarations of trust, or otherwise, the net income of which, if any, is distributable among the members or shareholders on the basis of the capital stock held by each, or, where there is no capital stock, on the basis of the proportionate share of capital which each has or has invested in the business or property of the organization. But see articles 4, 5, 6, 7. An organization, the membership interests in which are transferable without the consent of all of the members, however the transfer may be otherwise restricted, and the business of which is conducted by trustees or directors and officers without the active participation of all the members as such, is an association.

[¶ 988] **Art. 4. Limited partnerships as corporations.**—Partnerships with limited liability or partnership associations authorized by the statutes of Pennsylvania and a few other States are only nominally partnerships. Such

so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, and capable of holding real estate and bringing suit in the common name, are more truly corporations than partnerships, and are taxable as corporations. In all doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized. Michigan partnership associations are corporations. The liability of Virginia limited partnerships is determined in each case from consideration of the certificate of partnership and all pertinent facts relative thereto.

[¶ 989] Art. 5. **Limited partnerships as partnerships.**—So-called limited partnerships of the type authorized by the statutes of New York and most of the States are partnerships and not corporations within the meaning of the statute. Such limited partnerships which can not limit the liability of the general partners, although the special partners enjoy limited liability so long as they observe the statutory conditions, which are dissolved by the death or transfer of the interest of a general partner, and which can not hold real estate or sue in the partnership name, are so like common law partnerships that they can not be differentiated therefrom for tax purposes. Michigan and Illinois limited partnerships are partnerships. California special partnerships are partnerships.

[¶ 990] Art. 6. **Partnership banks.**—A partnership bank, conducted like a corporation and so organized that the interests of its members may be transferred without the consent of the other members, is a joint-stock company or association within the meaning of the statute. A partnership bank, the interests of whose members can not be so transferred, is a partnership.

[¶ 991] Art. 7. **Massachusetts trusts.**—The test of liability in all cases involving trusts of the Massachusetts type is whether the cestuis que trustent have by the terms of the trust agreement a voice in the management or control of the trust. Where the trustees are in complete control of the business, the beneficiaries having no control except the right of filling vacancies among the trustees or of consenting to a modification of the terms of the trust or of dissolving the trust, no association exists. If, however, the cestuis que trustent have a voice in the control or management of the business of the trust, whether through the right to elect trustees periodically or to remove the trustees or to restrict the trustees as to the management of the trust or otherwise, the trust is an association within the meaning of the statute. Where the trustees hold in their own right a sufficient number of the certificates of beneficial interest to constitute control as between the beneficiaries, the trust will be held to be an association regardless of the powers conferred upon the trustee by the instrument creating the trust.

[¶ 992] Art. 8. **Domestic corporations.**—A domestic corporation is a corporation created or organized in the United States, which includes the States, Territories of Alaska and Hawaii, and the District of Columbia.

[¶ 993] Art. 9. **Foreign corporations.**—A foreign corporation is a corporation created or organized outside the United States as defined in article 8.

TAX ON DOMESTIC CORPORATIONS.

[¶ 994] Sec. 1000 (a) (1). Every domestic corporation shall pay annually a special excise tax with respect to carrying on or doing business, equivalent to \$1 for each \$1,000 of so much of the fair average value of its capital stock for the preceding year ending June 30 as is in excess of \$5,000. In estimating the value of capital stock the surplus and undivided profits shall be included;

[¶ 995] Art. 10. **Basis of the tax: "Carrying on or doing business."**—The basis of the tax in the case of a domestic corporation is "carrying on or doing business" in the capacity of a corporation, association, or insurance

company. The words "carrying on or doing business" must be given their ordinary and natural signification. "Business" is a very comprehensive term and embraces whatever occupies the time, attention or labor of men for the purpose of livelihood or profit. In other words, business necessarily involves the idea of gain. The true basis of distinction is, in the first instance, between—

(a) A corporation organized for the purpose of doing business as above defined, and

(b) A corporation organized for the sole purpose of owning and holding property and distributing its avails;

and, in the second instance, between—

(c) A corporation of class (a) which is continuing the body and substance of the business for which it was organized or is still active and maintaining its organization for the purpose of continued efforts in the pursuit of profit or gain, and

(d) A corporation which, although included in class (a), has substantially retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of property, distributing its avails, and doing only the acts necessary to the maintenance of its corporate existence and the private management of its purely internal affairs.

The distinction in each case must depend upon the peculiar facts in the case. Corporations of class (a) will be presumed to be subject to the tax unless they submit proof, satisfactory to the Commissioner, that they are not actually carrying on or doing business. If a corporation claim exemption on the ground that it belongs to class (b), it will be required to file an excerpt from its charter setting forth its corporate powers together with a full and comprehensive statement showing the nature of the activities in which it is and has been actually engaged. If it claim exemption on the ground that it belongs to class (d), it will be required to furnish a copy of any amendment of its charter, resolution of its board of directors, or other evidence, satisfactory to the Commissioner, showing that it has reduced its activities to the mere ownership of property, receipt of its avails, and the doing of only what is necessary to the maintenance of its corporate existence.

[§ 996] Art. 11. "**Carrying on or doing business**" illustrated.—Corporations organized for the purpose of and actually engaged in such activities as buying, selling, or dealing in mineral or timber land or other real estate; leasing property, collecting rents, managing office buildings, making investments of profits; leasing lands and collecting royalties, managing wharves, dividing profits; and in some cases investing the surplus, are engaged in "carrying on or doing business" within the meaning of the statute.

A corporation organized for the purpose of, and actually engaged in, buying mineral or timber land or other real estate and holding it with a view to future sale at an advance is carrying on or doing business.

A corporation organized for the purpose of owning and leasing real estate which has leased all of the property under its control is still engaged in doing business unless, under the terms of its lease, its activities have been reduced to the mere receipt and distribution of the avails of the leases at the actual cost of so doing. If it is still maintaining its organization for the purpose of continued effort in the pursuit of profit and gain it is doing business.

A corporation owning or managing real estate which leases all of its property but under the terms of the lease is required to maintain or keep the property in repair is doing business.

A corporation engaged in mining or in developing and speculating in mineral lands is doing business.

A corporation engaged in buying and selling securities or other property is doing business even though for a period it makes no purchases or sales because of unfavorable market conditions.

A corporation formed to take over miscellaneous stocks, bonds, or other property (as of an estate), to negotiate sales of various items from time to time as opportunity and judgment dictate, and to distribute the profits from time to time as liquidation is effected, is, while so engaged, carrying on or doing business.

A parent corporation which finances or manages the operations of its subsidiaries is doing business.

A so-called holding company which, under its charter, is authorized to and does, in addition to receiving and distributing the avails of the property or securities, held by it, finance the operations of its subsidiaries, is engaged in doing business.

A corporation organized for the purpose of taking over and holding securities, timber land, coal lands, or other real estate, is held to be doing business, if it makes investments or reinvestments of its surplus income or funds in excess of an amount necessary to maintain its original investments.

[¶ 997] Art. 12. **Not "doing business."**—Holding companies as distinguished from parent corporations, and corporations all of whose property and business is operated by, or is in the hands of, a receiver or the Alien Property Custodian, are not doing business.

A holding company is defined as one whose corporate powers are limited to the mere owning and holding of property and distribution of its avails, or one which, although incorporated for the purpose of doing business as defined in article 10, has substantially retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of property, distributing its avails, and doing only such acts as are necessary to the maintenance of its corporate existence and the private management of its purely internal affairs.

A holding company, as above defined, will not be considered to be doing business by reason of the reinvestment of its surplus income or funds to the extent only of maintaining its original investments. (Basis of this ruling will be found in case of *Butterick Co. v. U. S.* 240 Fed. 539.)

[¶ 998] **Digest of Decisions of United States Courts construing the term "Doing Business."** (Prepared by direction of the Secretary of the Treasury for use of Committee on Ways and Means.)

CROSS REFERENCES—"DOING BUSINESS."

For set of facts held to constitute "doing business" in case of—

Additional franchises procured by lessor, see cases 17, 19.

Eminent domain exercised or purchase of property by lessor, see cases 13, 15, 21.

Distribution of rent by lessor, see cases 1, 2, 3a, 4, 5, 9, 17, 18, 23, 26, 27, 28, 29.

Insurance companies, see case 3.

Leased corporations, see cases 1, 2, 3a, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35.

Mining companies, see cases 1, 2, 12, 33.

Power of attorney, see case 16.

Railway companies, see cases 3a, 10, 11, 13, 14, 15, 18, 25, 26, 29, 32, 34, 35.

Realty companies, see cases 4, 8, 9.

Sale of stocks or bonds or issuance of bonds by lessor, see cases 6, 15, 24, 27, 28, 34.

Street railway companies, see cases 5, 6, 7, 19, 20, 21, 22, 23, 27, 28, 31.

Rent paid by lessee directly to lessors' stockholders, see cases 12, 30.

"Doing business."

1. A corporation, the sole purpose whereof is to hold title to a single parcel of real estate subject to a long lease and, for convenience of the stockholders, to receive and distribute the rentals arising from such lease and proceeds of disposition of the land, and which has disqualified itself from doing any other business, is not a corporation "doing business" within the meaning of the corporation tax provisions of the act of August 5, 1909, c. 6, 36 Stat. 11, 112, and is not subject to the tax. (*Zonne v. Minneapolis Syndicate*, 220 U. S. 187, 1911.)

2. Where defendant corporation was organized to own the stock of a mining company, and had no assets except such stock, a small amount in bank, and office furniture, etc., and did nothing other than to receive dividends from the operating company and distribute them as such among its own stockholders, it was not "doing business" within the act and was not subject to the tax. (*United States v. Nipissing Mines Co.*, 206 Fed. 431, 1913.)

3. An association organized under the laws of a State for the purpose of collecting assessments from its members and disbursing the same in payment of benefits on the death or injury of members and the expenses of the association, any surplus at the end of a year being paid into a reserve fund to be used in payment of losses in any succeeding year which may exceed the assessments for that year, is an "insurance company" and in exercising the functions for which it was organized is "doing business" within the meaning of those terms as used in Corporation Tax Act, August 5, 1909. * * * (*Commercial Traveler's Life and Accident Association v. Rodway*, 235 Fed. 370, 1913.)

3-A. A railway corporation which has leased its railroad to another operating company but which maintains its corporate existence and collects and distributes to its stockholders the rental, from the lessee and also dividends from investments is not "doing business" within the meaning of this act and hence not required to make return or pay the tax. (*Park Realty Co. case*, 220 U. S. 107, *disting.*, and *Zonne v. Mpls. Syndicate*, 220 U. S. 187, *followed.*) (*McCoach v. Minehill & S. H. R. R. Co.*, 228 U. S. 295, 1913, *Affg.* 192 Fed. 670, 1912.)

4. Where a corporation, with general business powers, amended its articles so as to limit its activities to the mere ownership and rental of certain property occupied and used by its stockholders as a department store, and applied the entire rent, first to the payment of interest on mortgage liens, and then to the payment of dividends to stockholders, it was not "doing business," under Corporation Tax Act, August 5, 1909. (*Abrast Realty Co. v. Maxwell*, 206 Fed. 333, and *Maxwell v. Abrast Realty Co.*, 218 Fed. 457, 1914.)

5. Where a street railway company, under authority of the State law, leased at a graded annual rental its system of street railways, which it owned, operated, and controlled, to another company for a long term, and thereafter engaged in no other business than to maintain and preserve its corporate existence, receiving the rent, and distributing the income among its stockholders, it was no longer "doing business" as a traction company, and was therefore not subject to franchise taxation, under act of August 5, 1909 * * * which is only applicable to corporations doing business in a corporate capacity as authorized. (*Wilkes-Barre & W. V. Traction Co. v. Davis*, 214 Fed. 511, 1914.)

6. Selling stocks or bonds by lessor, proceeds to be applied to making improvements, makes lessor liable. The lessor company engages in business, although it may not have in its immediate possession the equipment and appli-

ances of a railroad business. (*Lima Electric R. & Lt. Co. v. Bettman*, Commissioner's Annual Report, 1914, p. 25.) (But see cases No. 15, 24, 34.)

7. Substituting one mortgage bond for another for the purpose of renewing, refunding, or extending time for the payment of preexisting debt, does not render the lessor company liable as carrying on business in the capacity designated in its articles of incorporation. (*Lima Elec. Ry. and Lt. Co. v. Bettman*, S. D., Ohio, Annual Report of Commissioner of Int. Rev. 1914, p. 26.)

8. A corporation to be subject to the tax must be organized for the purpose of doing business, and, in addition, must be actually engaged in that business.

The question is rather what the corporation is doing than what it could do. (*Emery, Bird, Thayer Realty Co. v. United States*, 198 Fed. 242, 1912, affirmed by Supreme Court in 237 U. S. 28, 1915.)

9. A realty corporation simply collecting and distributing rent from a specified parcel of land is not doing business within the meaning of corporation tax law of 1909. (*Emery, Bird, Thayer Realty Co. v. United States*, 198 Fed. 242, 1912, affirmed by Supreme Court, 237 U. S. 28, 1915; *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, followed; *Cedar St. Realty Co. v. Park Realty Co.*, 220 U. S. 107, distinguished.)

10. Within act August 5, 1909, section 38, the expression "engaged in business," "carrying on business," or "doing business" do not have different meanings, but separately or connectedly convey the idea of progression, continuity, or sustained activity, and "engaged in business" means occupied or employed in business; "carrying on business" does not mean the performance of a single disconnected business act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto, while "doing business" conveys the idea of business being done, not from time to time, but all the time. (*Lewellyn v. Pittsburgh B. & L. E. R. Co.*, 222 Fed. 177, 1915.)

11. The bare acts of the lessor company in acquiring property by purchase and condemnation proceedings at request of lessee do not constitute "carrying on or doing business" within the meaning of the statute. (*Lewellyn v. Pittsburgh B. & L. E. R. Co.*, 222 Fed. 177, 1915.)

12. An iron company, which with the approval of its stockholders, leased to another company for 999 years all the property constituting its manufacturing plant, sites, mines, and roads, and coal and other lands, not to exceed 10,000 acres, and assigned to the lessee all its cash, contracts, and entire business, in consideration of a rental equal to 4 per cent on its outstanding stock, payable directly to its stockholders, together with an additional amount to cover the cost of maintaining its organization, after which it merely existed as landlord and lessor, and had no other income than the rent, was not "doing business" within the meaning of Corporation Tax Act, August 5, 1909, imposing an excise upon the doing or carrying on of business in a corporate capacity in a State. (*Cambria Steel Co. v. McCoach*, 225 Fed. 278, 1915.)

13. Where railroad companies leased their railroads, rolling stock, and other property, and surrendered possession thereof to the lessee, and the lessee thereupon assumed and maintained entire control and operation of the roads, the lessors agreeing to maintain their corporate existence in order to hold title to the properties and to exercise their power of eminent domain in acquiring additional property when the lessee might so request and furnish the money therefor, and the lessee agreeing to pay the taxes and interest upon the bonded indebtedness of the companies, and to pay dividends to the lessor's stockholders at an agreed rate, the acquisition of property by the lessors by

purchase and condemnation pursuant to the request and direction of the lessee, which property was paid for with money furnished by the lessee and was immediately delivered into the possession of the lessee and used by it in operating the roads under the terms of the leases, was not such a doing of business as made the lessors liable for the special excise tax imposed by act August 5, 1909, * * * providing, etc., as corporate acts performed by a corporation in the exercise of its primary franchises, as the maintenance of its corporate existence or which relate strictly to the internal affairs of the corporation and do not include the exercise of its secondary franchises, do not constitute "doing business" within the statute, and though the acts of purchasing and condemning property were both corporate and business acts, the corporations merely acquired the instrumentalities to do the thing and to carry on the business for which they were incorporated, and moreover "net income" imports a gross income, and the difference between the two implies the expenditure of income for some corporate purpose, as that of carrying on or doing the business for which the corporation is organized, and such corporations received no income from railroads operated by them, and expended none in the operation of railroads or for any other purpose. (*Lewellyn v. Pittsburgh, B. & L. E. R. Co.*, 222 Fed. 177, 1915.)

14. During the greater part of the year 1910 plaintiff, a railroad company, owned a line of railroad which, with its rolling stock and equipment, was leased and operated by the lessee, which was obligated by the lease to pay all expenses of maintenance and renewal, taxes on the property, and other incidental expenses, but was entitled to retain from the rental the cost of certain permanent improvements made. During such time the lessor maintained its offices, transferred stock, collected and deposited the rental, and expended such sums as were necessary in maintaining its corporate existence, including the State corporation tax. Before the end of the year the lease was canceled by mutual consent, and the lessor immediately sold and transferred all of the property and from the proceeds paid its bonded and other indebtedness. Held, That the lessor was not "engaged in business" during the year, within the meaning of Corporation Tax Act, August 5, 1909, * * * and that it was not subject to the excise tax imposed thereby. (*Miller v. Snake River Valley R. Co.*, 223 Fed. 946, 1915.)

15. A lessor company, by issuing bonds at the lessee's request, in accordance with provisions in the lease, and in exercising the right of eminent domain to obtain additional land necessary for the operation of the leased road, at lessee's expense and under its direction, was not doing business within the meaning of the act. (*New York Central & H. R. R. Co. v. Gill*, 219 Fed. 184, 1915, *C. C. A.*, reversing *N. Y. C. & H. R. R. Co. v. Gill*, T. D. 1999, 1914.)

16. Two corporations chartered by special acts of the New York Legislature to construct and operate pneumatic tubes between places in the State for the conveyance of mails, newspapers, and parcels, each owned and operated tubes connecting the general post office in Manhattan with branch offices and different places, and used exclusively for transportation of mails. By the action of the Post Office Department bids were invited for carrying of mails by pneumatic tubes, but subject to the requirement that but one bid should be made for the service of the tubes owned by such two corporations, whereupon one company leased all of its property for a term of years to the other, which secured the contract and performed the required service. Held, That such lease was not ultra vires on the part of the lessor, but was valid, and that on its execution the lessor ceased doing business within the meaning of the Corporation Tax Act of August 5, 1909 * * * and was not subject to the excise tax thereby imposed.

Power of attorney is one method of enabling leasing companies to transact business formerly done by granting companies and does not make leasing company agent of lessor company.

A corporation, unless prohibited by explicit terms in its grant of power, may let its property for limited term of years; the lessee is not agent of lessor; the power to sell implies the power to lease and such lease is valid although not authorized by charter. (*New York Mail and Newspaper Trans. Co. v. Anderson*, C. C. A. in 234 Fed. 590, 1916, and *N. Y. Pneumatic Service Co. v. Anderson* [affirms dec. of D. C.])

17. A gas company, which has leased its plant and all other physical property for a term of years, the business for which it was incorporated being carried on by its lessee, is not "carrying on or doing business" within the meaning of this act and subject to the tax thereby imposed, although it retains its franchise and organization, and receives and disburses its income, and under the terms of the lease bears the expense of alterations, improvements, and additions to its plant made during the term, and also during the term has applied for and obtained from the legislature amendments to its special charter. (*Waterbury Gaslight Co. v. Walsh*, 228 Fed. 54, 1916.)

18. A railway company leased its mines, railroads, and other property, but thereafter maintained an office for the transaction of business, maintained its corporate existence and organization by the annual election of officers, and received an income in the shape of rental, and distributed dividends to its stockholders. It held itself in readiness to resume the operation of its properties if the leases should be violated by the lessees, and in such leases it reserved the right to develop the forests on its land, to remove timber, and to mine everything underlying its properties except coal. It made annual returns of its income, and kept and maintained stock books for the transfer of its capital stock and the transactions of other business. Held, That these acts did not constitute a "doing of business," so as to subject the corporation to the corporate excise-tax act, as it is not the power to act, but actual activities in certain directions, which constitute a "doing of business," and the corporation was not doing business as a common carrier which was the prime object of its incorporation. (*State Line & S. R. Co. v. Davis*, 228 Fed. 246, 1916.)

19. A corporation which, having leased all its property and franchises, except its franchise to be a corporation, thereafter affirmatively exerts its power for the acquisition of additional franchise rights, is "doing business," so as to be subject to the excise tax, under this section. (*Public Service Ry. Co. et al. v. Herold*, 227 Fed. 490, 1915. Reversed in *Public Service Ry. Co. v. Herold*, 229 Fed. 902, 906, 1916.)

20. A corporation, though it has leased its electric power plant and all its property and franchises, except the franchise to be a corporation, is "doing business," and so subject to the excise tax, under this section, one of the express purposes of its incorporation being to lease such plants. (*Public Service Elec. Co. et al. v. Herold*, 227 Fed. 491, 1915. Reversed by *Pub. Service Ry. Co. v. Herold*, 229 Fed. 902, 906, 1916, on this point.)

21. A corporation which leases its business as it exists, but in doing so preserves a right to extend such business for the benefit of the lessee, if the lessee requests it, is thereafter "doing business," and so subject to the excise tax, under act August 5, 1909, where it exerts such reserve power in a substantial way, so as to acquire additional property, though doing so for the benefit of the lessee as well as itself. (*Public Service Ry. Co. v. Herold*, 227 Fed. 494, 1915. Reversed in *Pub. Service Ry. Co. v. Herold*, 229 Fed. 902, 906, 1916.)

22. Where a corporation leased its property, franchises, rights, and privileges, the lessee agreeing to make extensions to the lessor's lines of railway, etc., and the corporation performed no acts save to receive rentals, it was not liable to corporation taxes, under this act, because not "doing business." (*Public Service Co. et al. v. Herold*, 227 Fed. 500, 1915. Affirmed by *Public Service Ry. Co. v. Herold*, 229 Fed. 902, 906, 1916.)

23. Corporation tax law (act August 5, 1909, clause 1) * * * imposes such excise tax, not because of every act performed by a corporation under its incidental powers, but upon the privilege of doing and carrying on the business for which the corporation is organized, and when it ceases the conduct of such business by turning it over to be carried on by another it ceases to be subject to the tax so long as it commits no act by which the resumption of its business is to be inferred.

A corporation authorized by its charter to "manufacture, buy, sell, lease, and let power plants and generating stations for the manufacture and distribution of electric current" is not, because a part of its authorized business is the leasing of property, carrying on or doing business within the meaning of the corporation tax law, where by a lease it divested itself of all of its property, and has since merely maintained its entity and collected and disbursed the rents for the demised property. (*Public Service Co. v. Herold*, 229 Fed. 902, 1916. Reversing *Pub. Service Ry. Co. v. Herold*, 227 Fed. 494; *Pub. Service Ry. v. Herold*, 227 Fed. 490; *Pub. Service Elec. Co. et al. v. Herold*, 227 Fed. 491. Affirming *Pub. Service Ry. Co. et al. v. Herold*, 227 Fed. 500; *Pub. Service Gas Co. et al. v. Herold*, 227 Fed. 496, 1915.)

24. A gas company leased all of its property, the contract of lease providing that the lessee should assume the company's contracts and should be entitled to use the company's name whenever necessary to have the benefit of its franchises. It was also agreed that the lessor's plan should be maintained by the lessee, who should make any necessary or advisable extensions. The company retained its corporate organization, paying secretary's salary, director's fees, and for books and postage used in the distribution of dividends and the payment of interest on bonds. No new bonds, however, were issued, although stock owned by the company in another corporation was voted. Held, That the company was not "doing business" within this act, and so was not liable to corporation taxes. (*Public Service Gas Co. et al. v. Herold*, 227 Fed. 496, 1915. Affirmed by *Public Service Ry. Co. v. Herold*, 229 Fed. 902, 906, 1916.)

25. In the case of the *Rio Grande Junction Ry. Co. v. U. S.*, the Court of Claims held that a corporation doing the business for which it was organized was liable to tax. The court said:

We do not believe a corporation should be allowed to organize for the ostensible purpose of building and operating a railroad and then lease the road before it was built under such circumstances as to show that that was its original and only purpose, and thereby evade the payment of the corporation tax. (*Rio Grande Junction Ry. Co. v. U. S.*, 51 Ct. Cls. 274, 284, 1916.)

26. If the purpose for which the corporation was organized was to build and lease property, the rents derived from such lease are taxable, even though thereby the corporation leases all the property and of necessity goes out of all corporate business excepting the collection and distribution of its rents. (*Rio Grande Junction Ry. Co. v. U. S.*, 51 Ct. Cls. 274, 284, 1916.)

27. An operating agreement by which a street railroad company surrenders its own and leased lines to the possession of another company for operation for a term of 999 years, in consideration of annual rentals and the payment of interest on its indebtedness and that of its lessors, does not differ

in legal effect from a lease, and the lessor is not subject to the excise tax imposed by the Corporation Tax Law (act August 5, 1909) * * * as "doing business" through the operating company as its agent.

A corporation which has ceased to pursue the occupation for which it was organized by reason of the leasing of its property, may continue to exist, and to receive and disburse rentals, and pay or renew its debts, or create new indebtedness, without being subject to the excise tax for "doing business" under such statute. (*McCoach v. Continental Passenger Ry. Co.*, 233 Fed. 976, 1916.)

28. The true test of distinction to determine whether a corporation organized for a business purpose is "engaged in business" within the meaning of Corporation Tax Law, act August 5, 1909 * * * so as to be subject to the excise tax thereby imposed is whether it is continuing the body and substance of the business for which it was organized, and in which it set out, or whether it has substantially retired from it and turned it over to another. If the latter appears then its tax exempt status must be tested by the further query whether it had during the critical period done only such acts as are properly and normally incidental to the status of a mere lessor of its property or whether it has exercised its peculiar corporate franchise outside of and beyond the fair scope of that status.

Street and suburban railroad companies which owned and had operated their lines leased the same to an operating company for the full term of their franchises. Thereafter they did only what was necessary to maintain their organization, and collect and disburse their rentals in dividends and otherwise, except that in accordance with the provisions of some of the leases, giving the lessees the right to sell unimportant items of property, which was not needed and to reinvest the proceeds in other property subject to the lease, the lessors joined in conveyances of the property sold; also in one case under the terms of the lease the lessor issued to the lessee treasury stock and bonds previously authorized for improvement purposes, in payment for such improvements made by the lessee, and in another case the lessee brought a suit in the name of the lessor, the latter having no connection with the case. Held, That none of such acts constituted "engaging in business" within the meaning of this act, and that such corporations were not subject to the excise tax imposed thereby. (*Traction Co.'s v. Collectors of Int. Rev.*, 223 Fed. 984, 1915.)

29. A railroad corporation which had leased all its property to another, which operated and maintained it, paying a fixed rental to the lessor, is not carrying on or doing business within this act, though such corporation maintained its corporate existence and has an office where it receives the rental and distributes it among its stockholders, and though, as required by the lease, it has during the year made certain improvements on the property, paid for by the sale of old material or by certificates of indebtedness of the lessee, since the expression "doing business" in that statute is one in common use, which has the same meaning applied to a corporation as to a natural person, and does not include one who has retired from business and is merely maintaining property leased by him to another. (*Jasper & E. Ry. Co. v. Walker*, 238 Fed. 533, 1917.)

30. Where a lessee corporation agrees with the lessor for the benefit of the latter's shareholders to pay such shareholders quarterly sums or dividends on dates stated each year during the terms of the lease to registered holders of such shares on the 10th day preceding each date for payment and the agreement was endorsed on certificates of the capital stock of the lessor corporation. Held, That lessor corporation was doing business within the meaning of the

above act as the lessee company merely relieved lessor of the duty of distribution. (*Blalock, Collector, v. Georgia Ry. & Elec. Co.*, 246 Fed. 387, 1917.)

31. A street railway corporation which leased its lines and property to another corporation in 1897 and had not since operated them was not in 1913 "engaged in business" within Corporation Tax Law, August 5, 1909, * * * so as to be subject to the tax imposed by such law. (*West End Street Ry. Co. v. Malley*, 246 Fed. 625, 1917.)

32. The plaintiff corporation to which payments were required to be made by the railroads using the terminal, and which granted concessions and licenses to others than the said stockholding railroads for the transaction of various kinds of business, and which operated facilities for supplying power, heat, light, gas, etc., manufactured by it, was engaged in business. (*Boston Terminal Co. v. Gill*, 246 Fed. 664, 1917, affirming the decision of the district court in T. D. 2428, 1916.)

33. A corporation which has not reduced its activities to owning and holding property and the distribution of its value, but maintains its organization for continued efforts in pursuit of profit and for such activities as are therein essential, is carrying on business within the meaning of the act.

Respondent corporations, besides receiving and distributing among their shareholders the royalties from a number of outstanding long-term "mining leases," employed another company to inspect the lessee's operations and keep them to their contracts, made some mining explorations at expense on other parts of their properties, sold or leased other parcels and sold some timber. Held, That they were carrying on business within the meaning of this act. (*Von Baumbach v. Sargent Land Co.*, 242 U. S. 503, 1917.)

34. A railroad corporation leased its property and franchises, for the full term of its charter and any renewal thereof, to another railroad company, the lease being approved by the State Legislature granting the original charter, and providing, not only that the lessor should thereafter maintain its corporate existence, but should issue to the lessee stock, bonds, or other obligations for the completion of a projected branch road and for the construction of any other railroads which the lessee might desire to construct and to cover expenses for the construction or purchase of locomotives, cars, and machinery, the lessee binding itself to pay and discharge such obligations at maturity. Held, That the issuance of bonds by the lessor corporation under such provision did not amount to a resumption of business which the lease had transferred or an engaging in business within Corporation Tax Act, August 5, 1909. (*Anderson v. Morris & E. R. Co.*, 216 Fed. 83, 1914; followed in 219 Fed. 185, 1915; *N. Y. Central & H. R. R. Co. v. Gill*; 223 Fed. 989, 1915, *Traction Co.'s. v. Collectors of Int. Rev.*; 229 Fed. 902, 1916, *Pub. Service Ry. Co. v. Herold*; 239 Fed. 739, 1917, *Rensselaer & S. R. Co. v. Irwin*.)

35. The Old Colony Railroad Co., whose demised roads were operated by the New York, New Haven & Hartford Railroad Co. as lessee, and not as agent, Held, not a corporation "engaged in business" during the years 1909-1912, inclusive, within the meaning of Corporation Tax Law, August 5, 1909, sec. 38, and therefore not subject to the imposition of the tax authorized. (*Old Colony R. R. Co. v. Gill*, 257 Fed. 220, August 6, 1919.)

36. A pipe-line company organized by, and doing business for, two other pipe-line corporations. Held, not merely a convenient agent of these corporations, but to be doing business for profit within corporation tax law. (*Associated Pipe Line Co. v. United States*, 258 Fed. 800, 1919.)

[¶ 999] Art. 13. **Rate of tax.**—The tax is at the rate of \$1 for each full \$1,000 of the fair average value of the capital stock of the corporation in excess

of the prescribed deduction of \$5,000. The tax is computed not upon the par value of the stock, but upon the fair average value for the preceding year, or for the period during which it has been issued, if less than a year, of the capital stock outstanding at the date of the incidence of the tax. In the case of a domestic corporation it is on an entirely different basis from the excess profits tax, which is concerned with invested capital and not with the fair average value of the capital stock. Stock in the treasury of a corporation is not regarded as outstanding unless pledged as security for a debt. No deduction is allowed corporations organized in the United States for capital invested outside of the United States. If the corporation is doing business it is taxed on its entire capital stock even though most of it may not be employed in the business.

[¶ 1000] Art. 14. Fair average value of capital stock.—The fair average value of the capital stock for the purpose of determining the amount of the capital stock tax must not be confused with the market value of the shares of stock where it may be necessary to determine such value under other provisions of the revenue laws. The fair average value of the capital stock, the statutory basis of the tax, is not necessarily the book value or the value based on prices realized in current sales of shares of stock or even the value, determined by capitalization of earnings, although it may be more directly dependent upon the last. It should usually be capable of appraisal by officers of the corporation having a special knowledge of the affairs of the corporation and general knowledge of the line of business in which it is engaged. Provision is accordingly made in Exhibit C of Form 707 (Revised) for the tentative determination of the fair value of the capital stock by capitalizing the net earnings of the corporation on a percentage basis fixed by its officers as fairly representing the conditions obtaining in the trade and in the locality. But such fair value, except in the case of insurance companies, must not be set at a sum less than the reconstructed book value shown by Exhibit A, unless the corporation is materially affected by extraordinary conditions which support a lower valuation. In any such case a full explanation must accompany the return. The Commissioner will estimate the fair value of the capital stock in cases regarded as involving any understatement or undervaluation. For the method of computing the fair average value of capital stock in the case of insurance companies see articles 22 and 24. (See Counsel's Explanation of Use of Exhibits in Making Returns at paragraphs 1065 to 1068 hereinafter.)

[¶ 1001] Art. 15. Surplus and undivided profits.—The surplus and undivided profits of a corporation must be included in estimating the fair average value of its capital stock. If the fair average value be determined from the book value, the surplus and undivided profits are included in the assets, if from sales, they are necessarily a factor in determining the market price, and if from net income, they are reflected to a greater or less extent in the earnings.

[¶ 1002] Art. 16. Deduction of \$5,000.—From the total fair average value of the capital stock the sum of \$5,000 is to be deducted, and the tax is upon each full \$1,000 of any balance. Accordingly, corporations the fair average value of whose capital stock is not more than \$5,000 are not subject to tax, but for the purpose of avoiding error every corporation is required to file a return as directed in article 31.

TAX ON FOREIGN CORPORATIONS.

[¶ 1003] Sec. 1000 (a) (2). Every foreign corporation shall pay annually a special excise tax with respect to carrying on or doing business in the United States, equivalent to \$1 for each \$1,000 of the average amount of capital employed in the transaction of its business in the United States during the preceding year ending June thirtieth.

[¶ 1004] **Art. 17. Basis of the tax.**—The basis of the tax in the case of a foreign corporation is “carrying on or doing business in the United States.” A foreign corporation is carrying on or doing business in the United States if it maintains an agent or an office or warehouse in the United States, or, in the case of an insurance company, if it writes insurance policies here, or in any other way enters the United States for the purposes of its business. The purchase of supplies in the United States in the furtherance of continued efforts in the pursuit of profit, or gain is carrying on or doing business in the United States.

[¶ 1005] **Art. 18. Capital employed in the United States.**—The “capital employed in the transaction of its business in the United States” means the portion of the total capital, surplus, and undivided profits, of the foreign corporation, utilized for the purpose of doing business in the United States. A foreign corporation may have income from sources within the United States for the purpose of the income tax, and yet not have capital employed in the transaction of business here for the purpose of the capital stock tax. Compare articles 91-93 and 550 of Regulations 45. A foreign corporation not actually doing business in the United States is not subject to tax, and accordingly the investment of a part of its funds in United States stocks and securities will not constitute capital employed in its business in the United States. For the definition of “doing business” see article 10. If a corporation does business here, then, although the mere investment of funds in United States securities is not such a taxable employment of capital, such investment will constitute capital employed in the transaction of business in the United States, if made in a subsidiary corporation which the foreign corporation uses as an instrumentality for the successful conduct of its own business in the United States. Thus the investment of the funds of a foreign corporation in the purchase of facilities, although apparently independent, for the purpose of its business here, or the purchase of stock and securities of a subsidiary corporation for the same purpose, will constitute the employment of capital in the transaction of business in the United States. A foreign corporation may not escape taxation by organizing, or purchasing the stock of another corporation to own the facilities which the foreign corporation needs in its business. See article 352, Regulations 45.

[¶ 1006] **Art. 19. Capital employed in the United States illustrated.**—A foreign corporation may employ capital in the transaction of its business in the United States in various ways. For example, the investment of funds in property in the United States used in its business, in stocks and securities of subsidiary corporations as explained in article 18, in bills and accounts receivable representing business done in the United States, in merchandise kept here for sale, in materials manufactured here, and in deposits in United States banks maintained for use in business here. Generally speaking, approximately such proportion of the entire capital of a foreign corporation will presumably be employed in the transaction of its business in the United States as the gross amount of its business in the United States bears to its total gross business, but this will not always be true, since a corporation may conceivably transact a greater or less volume of business in one country than in another on the same amount of capital.

[¶ 1007] **Art. 20. Rate of tax.**—The tax is at the rate of \$1 for each full \$1,000 of the capital of a foreign corporation actually employed in the transaction of its business in the United States, and is in all cases to be computed on the basis of the average amount of capital so employed during the preceding year ending June 30. The measure of the tax is accordingly different from that in the case of domestic corporations which pay a tax measured by the fair

average value of their capital stock. No deduction from the total fair average amount of capital so employed is allowed in computing the tax.

[¶ 1008] **Art. 21. Measure of tax.**—The measure of the tax is the average amount of capital employed in the transaction of business in the United States during the preceding fiscal year. It will usually be sufficient to determine the amount of capital so employed at the beginning of each year and the amount so employed at the end of such year, and to divide the sum of such amounts by two. Where, however, there have been material changes in the amount of capital, the average amount should be determined with due regard to the times at which such changes occurred. A foreign corporation may, if it so desire, compute the average amount of capital employed on a monthly basis.

TAX ON STOCK INSURANCE COMPANIES.

[¶ 1009] **Sec. 1000. (b)** In computing the tax in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included.

[¶ 1010] **Art. 22. Stock insurance companies.**—Insurance companies having a capital stock as distinguished from mutual insurance companies are taxable upon the same basis as other corporations, whether domestic or foreign, except that in computing the tax such reserve funds, which include deposits, as they are required by law or contract to maintain or hold for the protection of, or payment to, or apportionment among, policyholders, are not to be included. In the case of such companies the tax will be computed by deducting from the total book value of the assets the amount of the actual liabilities and legal reserves, unless the facts in the case indicate that the book value of the assets is substantially different from their fair market value, in which case it is permissible to make proper adjustment. In a case requiring such adjustment the market value of the shares of stock as shown by Exhibit B or the net earnings of the company as shown by Exhibit C in Form 707 (Revised) shall be considered, as well as the fair value of the assets.

TAX ON MUTUAL INSURANCE COMPANIES.

[¶ 1011] **Sec. 1000. (c)** * * * The taxes imposed by this section shall apply to mutual insurance companies, and in the case of every such domestic company the tax shall be equivalent to \$1 for each \$1,000 of the excess over \$5,000 of the sum of its surplus or contingent reserves maintained for the general use of the business and any reserves the net additions to which are included in net income under the provisions of Title II, as of the close of the preceding accounting period used by such company for purposes of making its income tax return: Provided, That in the case of a foreign mutual insurance company the tax shall be equivalent to \$1 for each \$1,000 of the same proportion of the sum of such surplus and reserves, which the reserve fund upon business transacted within the United States is of the total reserve upon all business transacted, as of the close of the preceding accounting period used by such company for purposes of making its income tax return.

[¶ 1012] **Art. 23. Mutual insurance company.**—The tax applies to domestic and foreign mutual insurance companies. A mutual protective association organized under a statute, whose only source of revenue is the assessments paid by its members and whose net income for each year is paid into a reserve fund, constituting the sole resource of the company, aside from current assessments, for the payment of losses, is an insurance company within the meaning of the statute. A voluntary unincorporated association of employees formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer.

[¶ 1013] **Art. 24. Domestic mutual insurance company: rate of tax.**—The tax is \$1 for each full \$1,000 of the excess over \$5,000 of the sum of (a)

the surplus or contingent reserves maintained for the general use of the business, and (b) any reserves the net additions to which are included in net income for the purpose of the income tax, in both cases figured as of the close of the last taxable year of the company. The net addition required by law to be made within the taxable year to reserve funds, including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds and, in the case of corporations issuing policies covering life, health, and accident insurance combined in one policy, issued on the weekly premium payment plan, continuing for life and not subject to cancellation, including such portion of the net addition not required by law, made within the taxable year to reserve funds as is needed for the protection of the holders of such combination policies, is not included in net income for the purpose of the income tax. See Regulations 45 and particularly articles 568-570 thereof.

[¶ 1014] Art. 25. **Foreign mutual insurance company: rate of tax.**—The tax is \$1 for each full \$1,000 of the same proportion of the sum of (a) and (b) in the last article which the reserve fund upon business transacted within the United States is of the total reserve upon all business transacted, calculated as of the close of the last taxable year of the company.

EXEMPTION FROM TAX.

[¶ 1015] Sec. 1000. (c) The taxes imposed by this section shall not apply in any year to any corporation which was not engaged in business (or in the case of a foreign corporation not engaged in business in the United States) during the preceding year ending June 30, nor to any corporation enumerated in section 231. * * *

[¶ 1016] Sec. 231. That the following organizations shall be exempt from taxation under this title—

- (1) Labor, agricultural, or horticultural organizations;
- (2) Mutual savings banks not having a capital stock represented by shares;
- (3) Fraternal beneficiary societies, orders, or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
- (4) Domestic building and loan associations and cooperative banks without capital stock organized and operated for mutual purposes and without profit;
- (5) Cemetery companies owned and operated exclusively for the benefit of their members;
- (6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;
- (7) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual;
- (8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;
- (9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;
- (10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses;
- (11) Farmers', fruit growers', or like associations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;
- (12) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(13) Federal land banks and national farm-loan associations as provided in section 26 of the act approved July 17, 1916, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes";

(14) Personal service corporations.

[¶ 1017] **Sec. 200.** That when used in this title—

* * * * *

The term "personal service corporation" means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists either (1) of gains, profits or income derived from trading as a principal, or (2) of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive; * * *

[¶ 1018] **Section 1.** That when used in this Act—

* * * * *

The term "Government contract" means (a) a contract made with the United States, or with any department, bureau, officer, commission, board, or agency, under the United States and acting in behalf, or with any agency controlled by any of the above if the contract is for the benefit of the United States, or (b) a subcontract made with a contractor performing such a contract if the products or services to be furnished under the subcontract are for the benefit of the United States. The term "Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive" when applied to a contract of the kind referred to in clause (a) of this paragraph, includes all such contracts which, although entered into during such period, were originally not enforceable, but which have been or may become enforceable by reason of subsequent validation in pursuance of law;

[¶ 1019] **Art. 26. Corporation not in business during preceding year.—**

The tax being payable in advance does not apply to any corporation which was not engaged in business during any part of the fiscal year preceding the year for which the tax is due, but if it was in business even one day of the preceding year and one day of the taxable year it is subject to the tax. There is no relation between the amount of the tax payable and the length of time the corporation was in business. A corporation engaged in business during a part of the preceding year, but not engaged in business at the beginning of the taxable year, is not required to make any return if it is dissolved or in process of dissolution, but if it is only temporarily inactive and subsequently during the year re-engages in business it should file a return in the month in which it recommences business and pay the tax due from the first of such month to the end of the taxable year. A corporation organized and beginning corporate activities on or after July 1, is not subject to tax for the remainder of the taxable period in which the company was organized, unless, as of July 1, it takes over the business of an organization which was subject to capital stock tax, in which event the new corporation is required to file a return and pay the tax. In the case of foreign corporations "engaged in business," means the transaction of any business within the United States.

[¶ 1020] **Art. 27. Exempt organizations.—**The tax does not apply to the following corporations:

(1) Labor, agricultural or horticultural organizations;

Agricultural or horticultural organizations exempt from tax do not include corporations engaged in growing agricultural or horticultural products or raising live stock or similar products for profit, but include only those organizations which, having no net income inuring to the benefit of their members, are educational or instructive in character and have for their purpose the betterment of the conditions of those engaged in these pursuits, the improvement of the grade of their products, and the encouragement and promotion of these industries to a higher degree of efficiency. Included in this class as exempt are organizations such as county fairs and like associa-

tions of a quasi-public character, which, through a system of awards, prizes, or premiums are designed to encourage the production of better live stock, better agricultural and horticultural products, and whose income, derived from gate receipts, entry fees, donations, etc., is used exclusively to meet the necessary expenses of upkeep and operation. Societies or associations which have for their purpose the holding of annual or periodical race meets, from which profits inure or may inure to the benefit of the members or stockholders, do not come within the terms of this exemption. A corporation engaged in the business of raising stock or poultry, or growing grain, fruits, or other products of this character, as a means of livelihood and for the purpose of gain, is an agricultural or horticultural society only in the sense that its name indicates the kind of business in which it is engaged, and it is not exempt from tax. (Art. 512, Reg. 45.)

[¶ 1021] (2) Mutual savings banks;

A Massachusetts savings bank, otherwise exempt, which establishes an insurance department under the statutes of that State, does not thereby become subject to tax. * * * (Art. 513, Reg. 45.)

[¶ 1022] (3) Fraternal beneficiary societies, orders or associations;

A fraternal beneficiary society is exempt from tax only if operated under the "lodge system," or for the exclusive benefit of the members of a society so operating. "Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like. In order to be exempt it is also necessary that the society have an established system for the payment to its members or their dependents of life, sick, accident, or other benefits. (Art. 514, Reg. 45.)

[¶ 1023] (4) Domestic building and loan associations and cooperative banks without capital stock;

A building and loan association entitled to exemption is one organized pursuant to the laws of the United States or of some State or Territory thereof, which accumulates funds to be loaned to its members and to be repaid in small periodical installments. The statute requires that the members of the association shall share in its profits on substantially the same footing. Subject to this requirement, it does not prevent exemption that the association issues prepaid stock entitled to a specified percentage of the profits. Where, however, the association issues paid-up stock, the holders of which are entitled to a fixed dividend and also to share in the profits with all the other holders of stock, it is not exempt. (Art. 515, Reg. 45.)

Where a building and loan association has no other feature which renders it liable to tax, it will ordinarily not be subject to tax merely because (1) it has paid-up shares which are (a) preferred as to earnings and (b) have a definite rate of interest which may be higher than the rate of dividends paid on other stock, or (2) its balance sheets show that it is loaning considerable sums to nonmembers, or (3) it is a regular borrower of large sums of money which it uses for loans to members, the dues paid by members being entirely inadequate for the business transacted by it.

[¶ 1024] (5) Cemetery companies;

A cemetery company having a capital stock represented by shares, or which is operated for profit or for the benefit of others than its members, does not come within the exempted class. A cemetery company of which all lot owners are members, issuing preferred stock entitling the holder to a semi-annual dividend of four per cent, and whose articles of incorporation provide that the preferred stock shall be retired at par as soon as sufficient funds are realized from sales and that all funds realized in addition thereto shall be used by the company for the care and improvement of the cemetery property, is within the exemption. (Art. 516, Reg. 45.)

[¶ 1025] (6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals;

The exemption applies only to a corporation or association. It does not include the case of a trust, under which the trustee is authorized to use the trust property for religious purposes. In order to be exempt the corporation or association must meet three tests: (a) It must be organized and operated for one or more of the specified purposes; (b) it must be organized and operated exclusively for such purposes; and (c) no part of its income must inure to the benefit of private stockholders or individuals.

(1) Charitable corporations include an association for the relief of the families of clergymen, even though the latter make a contribution to the fund established for this purpose; or for furnishing the services of trained nurses to persons unable to pay for them; or for aiding the general body of litigants by improving the efficient administration of justice. Educational corporations may include an association whose sole purpose is the instruction of the public. This is true of an association to promote acquaintance with the Spanish language and literature, although it has incidental amusement features; of an association to increase knowledge of the civilization of another country; and of a chautauqua association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community and whose amusement features are incidental to this purpose. But associations formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute. * * * Scientific corporations include an association for the scientific study of law, to the end of improvement in its administration. (Art. 517, Reg. 45.)

A corporation organized and operated exclusively for the purpose of maintaining a symphony orchestra and giving musical concerts, the programs being of an educational character, and no part of the net earnings inuring to the benefit of any private stockholder or individual, is organized for "educational purposes."

(2) Where a religious corporation owns a large quantity of farm land and works it, and also manufactures and sells clothing and other articles for profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society.

(3) It does not prevent exemption that private individuals, for whose benefit a charity is organized, receive the income of the corporation or association. The statute refers to individuals having a personal and private interest in the activities of the corporation, such as stockholders. If, however, a corporation issues "voting shares," which entitle the holders upon the dissolution of the corporation to receive the proceeds of its property, including accumulated income, the right to exemption does not exist, even though the by-laws provide that the shareholders shall not receive any dividend or other return upon their shares. (Art. 517, Reg. 45.)

[¶ 1026] (7) Business leagues, chambers of commerce or boards of trade;

A business league is an association of persons having some common business interest, which limits its activities to work for such common interest and does not engage in a regular business of a kind ordinarily carried on for profit. Its work need not be similar to that of a chamber of commerce or board of trade. An association engaged in furnishing information to prospective investors to enable them to make sound investments is not such a league, since its members have no common business interest, and it is not exempt, even though all of its income is devoted to the purpose stated. A clearing house association not organized for profit, no part of the net income of which inures to any private stockholder or individual, is exempt provided its activities are limited to the exchange of checks and similar work for the common benefit of its members. An association of persons who are engaged in the business of carrying freight and passengers by boats propelled by steam, which is designed to promote the legitimate objects of such business, and all of the income of which is derived from membership dues and is expended for office expenses and the salary of a secretary-treasurer, is exempt from tax. An incorporated cotton exchange, whose shares carry the right to dividends, is organized for profit and is not exempt. (Art. 518, Reg. 45.)

[¶ 1027] (8) Civic leagues or organizations;

A corporation having capital stock and possessing a charter which authorizes it to buy, improve, and sell real estate is organized for profit within the meaning of the statute and is not exempt from tax as a civic league or organization, even though it no longer exercises such powers for profit and is operated exclusively for the promotion of social welfare. (Art. 519, Reg. 45.)

[¶ 1028] (9) Clubs;

The exemption applies to practically all social and recreation clubs which are supported by membership fees, dues, and assessments. If a club, by reason of the comprehensive powers granted in its charter, engages in traffic, in agriculture or horticulture, or in the sale of real estate, timber, etc., for profit, such club is not organized and operated exclusively for pleasure, recreation, or social purposes, * * *. (Art. 520, Reg. 45.)

[¶ 1029] (10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character;

It is necessary to exemption that the income of the company be derived solely from assessments, dues, and fees collected from members. If income is received from other sources, the corporation is not exempt, even though its additional income is tax exempt. Income, however, from sources other than those specified does not prevent exemption where its receipt is a mere incident of the business of the company. Thus the receipt of interest upon a working bank balance, or of the proceeds of the sale of badges, office supplies, or equipment will not defeat the exemption. The same is true of the receipt of interest upon Liberty bonds, where they were purchased as a patriotic duty and were afterwards sold. Where, however, such bonds are bought as a permanent investment, the receipt of the interest destroys the exemption. The receipt of what is in substance an entrance fee, charged by a mutual fire insurance company as a condition of membership, does not render the company taxable, although this fee is called a premium. But the issuance of policies for stipulated cash premiums prevents exemption. A local exchange or association to insure the owners of automobiles against fire, theft, collision, public liability, and property damage is exempt, since it performs functions of the same character as a mutual fire insurance company and is a like organization within the meaning of the statute. A local reservoir and ditch company may likewise be exempt from tax. The exemption does not include a telephone clearing association, whose business is to apportion toll rates between independent telephone companies handling the same calls and whose income consists of compensation paid by such companies and receipts from the sale of form blanks. The phrase "of a purely local character" qualifies only "like organizations." (Art. 521, Reg. 45.)

[¶ 1030] (11) Farmers', fruit growers', or like associations;

(a) Cooperative associations, acting as sales agents for farmers or others, in order to come within the exemption must establish that for their own account they have no net income. Cooperative dairy companies, which are engaged in collecting milk and disposing of it or the products thereof and distributing the proceeds, less necessary operating expenses, among their members upon the basis of the quantity of milk or of butter fat in the milk furnished by such members, are exempt from the tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, the company will be subject to tax. A farmers' association is not exempt from taxation where in accounting to farmers furnishing produce for the proceeds of sales it deducts more than the necessary selling expenses incurred. (b) Cooperative associations acting as purchasing agents, distributing to members in the guise of rebates profits made from nonmembers are not exempt from taxation. (Art. 522, Reg. 45.)

[¶ 1031] (12) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the income tax;

[¶ 1032] (13) Federal land banks and national farm loan associations as provided in section 26 of the act approved July 17, 1916, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes";

[¶ 1033] (14) Personal service corporations. (For definition, see Sec. 200, Rev. Act of 1918, p. 15.)

Corporations to be exempt under this classification must possess (1) the following positive attributes:

- (a) The corporation's gross income must be derived principally from compensation for personal services rendered by it to the persons with whom it does business.
- (b) The gross income must be primarily due to the activities of the principal owners or stockholders who must be personally actively engaged in the business.

- (c) At least 80 per cent of the capital stock must be owned by persons who are regularly engaged in the active conduct of the business.
 - (d) The gross income of brokerage and agency corporations must be based solely upon commissions;
- and (2) the following negative attributes:
- (e) The business of the corporation must be one in which capital is not a material income-producing factor. The larger the amount of capital actually used the stronger is the presumption that capital is necessary and is a material income-producing factor, and that the corporation is not a personal-service corporation.
 - (f) The corporation must not engage in buying or selling nor base its profits upon a difference in price between the buyer and seller nor assume any such risks as those of market fluctuations, bad debts, or failure to accept shipments.
 - (g) The corporation must not make loans or advances directly or indirectly, in order that it may render more satisfactory service to its principals or customers.
 - (h) The corporation must not own a controlling interest in a corporation other than a personal-service corporation.
 - (i) The corporation must not employ the services of others than the principal stockholders to an extent materially affecting the gross income.

In determining whether a corporation is a personal-service corporation, no weight can be given to the fact that the invested capital of the corporation for the purpose of the war profits and excess-profits tax or the actual investment of the principal owners or stockholders is comparatively small. The test established by the statute with respect to capital is entirely different. That test is the nature of the profession or business as indicated (a) by the kind of service it renders and (b) the extent to which capital is required to carry on such profession or business. If the use of capital is necessary or more than incidental, capital is a material income-producing factor and the corporation is not a personal-service corporation. No corporation is a personal-service corporation if it carries on business of a kind which ordinarily requires the use of capital, irrespective of whether the owners or stockholders have actually invested a substantial amount of capital.

The term "capital" means not only capital actually invested by the owners or stockholders, but also capital secured in other ways. Thus if capital is borrowed either directly as shown by bonds, debentures, certificates of indebtedness, notes, bills payable, or other paper, or indirectly as shown by accounts payable or other forms of credit, or if the business of the corporation is in any way financed by or through any of the owners or stockholders, these facts will be deemed evidence that the use of capital is necessary. If a substantial amount of capital is used to finance or carry the accounts of clients or customers, it will be inferred that because of competition or other reasons such practice is necessary in order to secure or hold business which otherwise would be lost, and that the corporation is not a personal-service corporation. If a corporation engaged in an agency, brokerage, or commission business regularly employs a substantial amount of capital to lend to principals, to buy and carry goods on its own account, or to buy and carry odd lots in order that it may render more satisfactory service to its principals or customers, it is not a personal-service corporation. In general the larger the amount of the capital actually used the stronger is the evidence that capital is necessary and is a material income-producing factor and that the corporation is not a personal-service corporation.

Merchandising or trading, either directly or indirectly, in commodities or the services of others is not rendering personal service. However, ordinary clerical assistance, and in technical or highly specialized lines of business, services of others may be employed to a limited extent without causing liability to attach, provided the income attributable to such employees is negligible as compared with the total income of the corporation.

No definite and conclusive tests can be prescribed by which it can be finally determined in advance of an examination of the corporation's return whether or not it is a personal service corporation. The foregoing general principles will govern in the classification.

To be exempt from capital stock tax corporations must have previously been granted full classification as personal-service corporations for the purpose of Federal income and profits taxes under Regulations 45 (Revised).

Government contracts may include (a) a contract with the United States, (b) a contract with an agency of the United States, (c) a contract with an agency of such agency, and (d) a subcontract with a contractor under any such contract; provided in every case the contract or subcontract is for the benefit of the United States. Unenforceable contracts subsequently ratified are treated as though made when originally executed. * * * (Art. 1510, Reg. 45.)

* * * A corporation is not a personal service corporation merely because less than 50 per cent of its gross income was derived from trading as a principal or from Government contracts. * * * (Art. 1524, Reg. 45.)

A more detailed discussion of the subject may be had by reference to Regulations 45 (Revised).

[¶ 1034] Art. 28. **Return by corporation claiming exemption.**—Where the officers of a corporation are of the opinion that it is exempt from the tax under section 231 of the Revenue Act of 1918, or on account of not being engaged in business, Form 707 (Revised) should be filled out and filed with the collector, together with a comprehensive statement of the reasons for claiming exemption. In such case the fair value should be reported on page 1 of the form, but the tax not computed, notation "Exemption claimed" being made instead. If exemption has been allowed for the preceding taxable year and there has been no change in the status or conditions of the company then the first 14 lines of Form 707 (Revised) should be completed and a statement attached to the effect that exemption is claimed for the same reasons as for the previous year and that the same status and conditions of the company exist for the taxable period in question. In this way the records of the collectors' offices will be complete and corporations will avoid requests for the filing of returns and unnecessary correspondence. The determination of liability rests in the first instance with the Commissioner of Internal Revenue and without complete information it is impossible to make a decision.

ELECTION TO BE TAXED AS CORPORATION.

[¶ 1035] Sec. 330. In the case of the organization as a corporation before July 1, 1919, of any trade or business in which capital is a material income-producing factor and which was previously owned by a partnership or individual, the net income of such trade or business from January 1, 1918, to the date of such reorganization may at the option of the individual or partnership be taxed as the net income of a corporation is taxed under Titles II and III; in which event the net income and invested capital of such trade or business shall be computed as if such corporation had been in existence on and after January 1, 1918, and the undistributed profits or earnings of such trades or business shall not be subject to the surtax imposed in section 211, but amounts distributed on or after January 1, 1918, from the earnings of such trade or business shall be taxed to the recipients as dividends, and all the provisions of Titles II and III relating to corporations shall so far as practicable apply to such trade or business: *Provided*, That this paragraph shall not apply to any trade or business the net income of which for the taxable year 1918 was less than 20 per centum of its invested capital for such year: *Provided further*, That any taxpayer who takes ad-

vantage of this paragraph shall pay the tax imposed by section 1000 of this Act and by the first subdivision of section 407 of the Revenue Act of 1916, as if such taxpayer had been a corporation on and after January 1, 1918, with a capital stock having no par value.

[¶ 1036] Art. 29. **Election to be taxed as corporation.**—A business enterprise (a) which was organized as a corporation before July 1, 1919, (b) in which capital is and has been a material income-producing factor, and (c) which was previously owned by a partnership or individual, may elect to be taxed as a corporation on its net income from January 1, 1918, to the date of organization of the corporation. In such event the corporation shall be treated as if in existence since January 1, 1918, for the purposes of the income tax, the war profits and excess profits tax, and the capital stock tax. The adoption of any other date than January 1, 1918, for such purpose is not permissible. But this option is not extended to a business enterprise with a net income for the taxable year 1918 less than 20 per cent of its invested capital.

The clauses of section 407, Revenue Act of 1916, as amended, and section 1000, Revenue Act of 1918, which require that a corporation must have been engaged in business some part of a year preceding the taxable period in order to be liable for the tax, are not applicable to corporations filing returns under section 330 of the Revenue Act of 1918; that is to say, organizations electing to report as corporations under the provisions of this section, are required to file capital stock tax returns for the six months' period from January 1 to June 30, 1918, and for all subsequent taxable periods.

RETURNS PUBLIC RECORDS.

[¶ 1037] Sec. 1000. (d) Section 257 shall apply to all returns filed with the Commissioner for purposes of the tax imposed by this section.

[¶ 1038] Sec. 257. That returns upon which the tax has been determined by the Commissioner shall constitute public records; but they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President: Provided, That the proper officers of any State imposing an income tax may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe: Provided further, That all bona fide stockholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any stockholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the names and the post-office addresses of all individuals making income-tax returns in such district.

[¶ 1039] Art. 30. **Inspection of returns.**—The returns upon which the tax has been determined by the Commissioner, although public records, are in general open to inspection only to the extent authorized by the President. All bona fide stockholders of record owning 1 per cent or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporations and of its subsidiaries, but such privilege of examination is personal and can not by power of attorney be delegated by the stockholder to another. Only such officers of any State as are charged with the enforcement of a State income-tax law shall have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and

in such manner as the Secretary may prescribe, and then only in case the information is to be used by them in connection with such enforcement. Any stockholder who is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

RETURN OF TAX.

[§ 1040] **Sec. 1305.** That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this act, and every person liable to any tax imposed by this act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[§ 1041] **Art. 31. Return by domestic corporation.**—Every domestic corporation shall make return on Form 707 (Revised), regardless of the par value of its capital stock. Also see articles 28 and 33. The fair average value of the capital stock of a corporation and the tax payable thereon shall be determined in accordance with the instructions in the form, which provides in Exhibit A for the book or fair value of the assets, in Exhibit B for the market value of the shares, and in Exhibit C for the value of the capital stock based on the capitalized earnings. All the information called for must be given in every case where it is procurable.

[§ 1042] **Art. 32. Return by foreign corporation.**—Every foreign corporation carrying on or doing business in the United States shall make return on Form 708 (Revised), irrespective of the amount of capital employed in this country in the transaction of its business. The capital actually employed in the transaction of the business of a foreign corporation in the United States and the tax payable thereon shall be calculated in accordance with the instructions on the form. See also articles 17, 18, 19, 20, and 21.

[§ 1043] **Art. 33. Time for making return.**—It shall be the duty of every corporation liable to the tax on or before the 31st day of July in each year to make a return, verified by oath, to the collector of the district in which its principal place of business is located. If any corporation fails to make and file a return within the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return, the collector or deputy collector shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony, or otherwise, make a return or amend any return made by a collector or deputy collector. Any return so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. If on account of sickness or absence of

the officer of the corporation charged with making the return, it is impossible to prepare and file a return on or before the 31st day of July (the due date), the collector, upon application in writing, may allow an extension of time not exceeding 30 days from July 31, in which to file the return. If extension is granted, the letter of the collector should be attached to the return. On no account is the Commissioner of Internal Revenue or the collector authorized to grant an extension of time in which to file capital stock tax returns in excess of 30 days from July 31, the due date. If for reasons, other than absence or sickness, beyond the control of the officers making the return, it becomes impossible to file a completed return within the time prescribed by law, a tentative return may be filed, thus avoiding penalty for failure to file within the prescribed time. See following article.

[¶ 1044] **Art. 34. Tentative return.**—The filing of a tentative return will avoid the penalty for delinquent filing, but does not authorize the withholding of the tax. The regulations do not permit the filing of a tentative return to stay indefinitely the filing of a completed return and the collection of the tax due; therefore, a tentative return clearly marked "Tentative return" should be prepared in as complete a manner as possible, including, among other information, a basis for the computation of the tax—that is, an estimate by the officers of the corporation of the approximate fair value of the capital stock in order that an initial assessment may be made. When the completed return is filed, it should be clearly marked "Completed return," showing that a tentative return was filed. Such action will prevent duplicate assessments and ordinary penalties. In every case a statement should be attached to the tentative return, indicating the approximate date the completed return may be expected. Upon receipt of the completed return any adjustment necessary in the assessment of the correct tax due will be made.

[¶ 1045] **Art. 35. Return by affiliated corporation.**—Although section 240 of the Revenue Act of 1918 requires a consolidated return for affiliated corporations for the purpose of income tax, for the purpose of capital stock tax each corporation must render a separate return in complete form. So-called subsidiary corporations, all or a part of the stock of which is owned by another corporation, must render separate returns, the same as every other corporation. No deductions from the assets are permitted on account of inter-company balances, and the shareholdings must be reported in the "Fair value" column at their actual worth at the time of making the return. No deduction is allowed in the return of one corporation for the tax paid by another.

If the fair value is determined by any method other than herein provided, the following requirements must be complied with: (a) The parent company must submit with its return a list of all subsidiaries and the districts in which the returns were filed; (b) the return of the subsidiary company must show the name of the parent company and the district in which the return was filed; (c) the method of determining the fair value, if other than by Exhibits A, B, and C, must be fully explained; (d) a copy of any agreement existing between parent company and subsidiary must be furnished, or a statement made that none exists; and (e) a combined balance sheet and a combined net income statement must be submitted for consideration in connection with any estimate of fair value made on behalf of the reporting corporation.

PAYMENT OF TAX.

[¶ 1046] **Sec. 1307.** That in all cases where the method of collecting the tax imposed by this act is not specifically provided in this act, the tax shall be collected in such manner as the Commissioner, with the approval of the Secretary, may prescribe.

[¶ 1047] Art. 36. Time for payment of tax.—All assessments shall be made by the Commissioner. The collector shall within 10 days after receiving any list of taxes from the Commissioner give notice to each corporation liable to pay any tax stated therein, to be left at its place of business or to be sent by mail, stating the amount of such tax and demanding payment thereof. If such corporation does not pay the tax within 10 days after the service or the sending by mail of such notice, it shall be the duty of the collector to collect the tax with a penalty of 5 per cent additional upon the amount of the tax and interest at the rate of 1 per cent a month. A collector has no authority to extend the time for payment of the tax, and any extension granted by him will be at his own risk. All taxes are payable direct to the collector of internal revenue of the district in which return is filed. The collector may accept payment of the tax when the return is filed as an "advance collection," subject to any adjustment later found necessary, but no corporation is required to pay the tax until after notice and demand. Tax due from a corporation is legally collectible from the stockholders or others who have received its assets upon liquidation.

[¶ 1048] Art. 37. Abatement and refund of taxes.—Section 3220 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, provides:

[¶ 1049] Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.

Section 3225 of the Revised Statutes, as amended by section 1316 of the Revenue Act of 1918, however, provides:

[¶ 1050] Sec. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation.

For the procedure regarding claims for abatement or refund, see Regulations 14 (Revised).

FRACTIONAL PART OF CENT.

[¶ 1051] Sec. 1313. That in the payment of any tax under this act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

[¶ 1052] Art. 38. When fractional part of cent may be disregarded.—In the payment of the tax, and in each step or computation necessary in determining its amounts, a fractional part of a cent may be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

MEDIUM OF PAYMENT OF TAX.

[¶ 1053] Sec. 1314. That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check

has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

[¶ 1054] **Art. 39. Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of taxes, provided such checks are collectible at par—that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, “This check is in payment of an obligation to the United States and must be paid at par. No protest,” with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover the taxes of two or more corporations, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instrument included in the same remittance; (d) the name of each corporation whose tax is paid by the remittance; (e) the amount of the payment on account of each corporation; and (f) the kind of tax paid.

[¶ 1055] **Art. 40. Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn shall refuse to pay it at par, the check shall be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amount received in payment of taxes. See section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depository bank shall fail at once to make the check good, the collector shall proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not released from his obligation until the check has been paid. See chapter 191 of the act of March 2, 1911.

CREDIT FOR FORMER TAX.

[¶ 1056] **Sec. 1004.** That if the tax imposed by section 407 or 408 of the Revenue Act of 1916, for the fiscal year ending June 30, 1919, has been paid by any person subject to the corresponding tax imposed by this title, collectors may issue a receipt in lieu of special tax stamp for the amount by which the tax under this title is in excess of that paid or payable and evidenced by stamp under the Revenue Act of 1916. Such receipt shall be posted as in the case of the special tax stamp, as provided by law, and with it, within the place of business of the taxpayer.

If the corresponding tax imposed by section 407 of the Revenue Act of 1916 was not payable by stamp, the amount paid under such section for any period for which a tax is also imposed by this title may be credited against the tax imposed by this title.

DOING BUSINESS WITHOUT PAYMENT OF TAX.

[¶ 1057] **Sec. 1005.** That any person who carries on any business or occupation for which a special tax is imposed by sections 1000, 1001, or 1002, without having paid the special tax therein provided, shall, besides being liable for the payment of such special tax, be subject to a penalty of not more than \$1,000 or to imprisonment for not more than 1 year, or both.

[¶ 1058] **Art. 41. Doing business without payment of tax.**—Every corporation which does business without having paid the tax is liable to a penalty of \$1,000. A corporation paying the capital stock tax is not on that account exempt from any occupational tax. For other penalties see articles 42 and 43.

PENALTIES.

[¶ 1059] **Sec. 1308.** (a) That any person required under Titles * * * X, * * * to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return, or supply any such information at the time or times required by law or regulation

shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor, and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than 1 year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or of section 605 or 620 of this act, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[¶ 1060] Art. 42. **Penalty for nonpayment of tax.**—(a) Any corporation which fails to pay the tax when due and payable is liable to a penalty of \$1,000. If it willfully refuses to pay or willfully attempts to evade the tax, it is liable also to a fine of \$10,000 and costs and to a 100 per cent penalty to be added to the tax. See also article 41. (b) Any officer or employee of a corporation who in the course of his duty fails to pay the tax when due and payable is liable to a penalty of \$1,000. If he willfully refuses to pay or willfully attempts to evade the tax, he is liable also to a fine of \$10,000 and costs and to imprisonment for a year, and to a penalty of the amount of the tax unpaid or evaded.

[¶ 1061] Art. 43. **Penalties for failure to make return and for false return.**—(a) Any corporation which fails to make a return within the required time is liable to a penalty of \$1,000. If it willfully refuses to make a return it is liable also to a fine of \$10,000 and costs. (b) Any officer or employee of a corporation who in the course of his duty fails to make a return within the required time is liable to a penalty of \$1,000. If he willfully refuses to make a return he is liable also to a fine of \$10,000 and costs and to imprisonment for a year. (c) **Section 3176** of the Revised Statutes, as amended by **section 1317** of the Revenue Act of 1918, also provides:

[¶ 1062] In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

AUTHORITY FOR REGULATIONS.

[¶ 1063] Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this act.

[¶ 1064] Art. 44. **Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

PAUL F. MYERS,

Acting Commissioner of Internal Revenue.

Approved June 21, 1920:

R. C. LEFFINGWELL,

Acting Secretary of the Treasury.

COUNSEL'S EXPLANATION OF USE OF EXHIBITS A, B, AND C IN MAKING RETURNS.

EXHIBIT A.

[¶ 1065] This Exhibit is a condensed balance sheet as of the date of June 30, or as of the date of the nearest earlier day falling within the preceding period of July 1 to June 30, when the books of the company were regularly closed. It will correspond with the date inserted at Item 7 of page 1 on the Return. It will show in one column all assets and liabilities according to the books of the company. In a parallel column will be shown the fair actual value for any overstated or understated values shown on the books of account. In a third parallel column will be shown the difference, if any, between the book values and the fair values of the respective items, accompanied by an explanation, where these differences are substantial in amount, in such manner as to enable the Commissioner to determine if the "fair value" is proper and acceptable. The books of the company need not be adjusted to take up the differences shown. In the event the taxpayer holds in its treasury any of its own stock or bonds advice must be furnished as to whether such stock and bonds are pledged or unpledged. If the amounts returned against any accounts listed generally as "other assets" and "other liabilities" are comparatively large, a comprehensive analysis of them must be attached. The instructions suggest that if the "profit and loss" balance is a debit, the amount should be shown in red. In many cases certain assets are shown as deferred charges and frequently good-will is carried on the books at a value considerably in excess of its true worth. The correct actual value may therefore be shown for it in the "fair average" column.

Reserves for the payment of dividends, whether declared or not, will not be considered as liabilities, except that an amount to cover the preceding dividend period may be so considered if the dividend has been declared and not disbursed. Cumulative dividends due but not paid may be deducted if satisfactorily explained. If the taxpayer has not set up a reserve for income and profits tax due and it is not shown as a liability on the books, an adjustment of surplus item should be made, and there should be set up as a liability the amount of income and profits tax due. If the taxpayer's accounting period is a fiscal year ending June 30, the item of income and profits tax may be estimated and the amount so ascertained to be due should be reflected in the adjusted surplus by showing the amount of tax as a liability. If the taxpayer's regular accounting period is the calendar year, and December 31 is used as the nearest earlier date from the following June 30 for the balance sheet in the capital stock tax return, the correct amount of the income and profits tax for the year ending December 31 may be definitely ascertained, so that if it was not reflected in the books when closed on that date, it should be adjusted in the balance sheet submitted as Schedule A and shown as a liability.

The capital, surplus, and undivided profits, as shown by the reconstructed balance sheet is of course the book value of the capital stock, and since opportunity is given in Exhibit A, as herein explained, for adjustment, it will represent the judgment of the officers as to the actual book value. The difference between the total debits and assets **after deducting debit items not actually assets**, such as treasury stock, or stock subscriptions, etc., and the total credits and liabilities, **after deducting capital stock, surplus, and other credits not actual liabilities** will be the fair value of the total capital stock reflected by Exhibit A. No provision appears to be made on the Return or otherwise for finding the average of such book value for the period covered, although the

tax is based, not on the fair value at the end of the year, but on the fair average value for such period. If the fair value as thus determined in Exhibit A is greater than the total fair average values as shown in either Exhibits B or C, it will be taken as the basis of the assessment.

EXHIBIT B.

[¶ 1066] This exhibit is devised for the purpose of determining the fair average value of the stock as disclosed by its fair average market value. To be applicable for the purposes intended, the stock of the corporation must either have been listed on a recognized stock exchange, or curb market, or there must have been an outside sale or sales during the period of 12 months ending with the close of the fiscal year specified in item 7 of page 1 of the Return. If no stock of the corporation has been listed, and no outside sale or sales have been made during the period referred to, then these facts should be so stated in Exhibit B on the Return. Outside sales must be those made at prices known or determinable by the officers making the report, and in such case the number of shares involved, and the conditions under which sales were made at other than exchange quotations must be stated. Sales to employees or directors for qualifying purposes, or sales which are restricted as to resale, or sales at prices specially influenced will not be considered representative of the fair value of the entire capital stock and should not be included.

If the stock is listed, the name of the exchange from which reported quotations are taken must be shown in the space provided therefor. If not listed, but if outside sales were made, the words "outside sales" should be inserted in the space at the top of Exhibit B. The prices reported where the stock is listed will be the mean of the highest and the lowest bid price during each month, (the month to be specified) from which the average for the year will be obtained. If the taxpayer prefers, a schedule may be attached to the Return showing the highest and lowest bid price at which stock was quoted for each day of the year and the average obtained therefrom. In the column on the form for this exhibit, described as "No. shares outstanding," should be shown the total number of shares outstanding at the close of each month, for which there were either outside sales made, or an average monthly sale price reported from stock exchange quotations. The average value per share will then be shown as a result of the following prescribed rule: First, if no change occurred in the number of shares outstanding during the year, total the quotations or sales prices for the months reported and divide by the number of months in which quotations or sales prices are shown. Second, if any change occurred in the number of shares outstanding during the year, calculate the total value of the outstanding shares each month upon the reported prices and divide the total of such monthly valuation by the sum of the number of shares outstanding each month. Then multiply the value per share by the average number of shares outstanding for twelve months.

An example of the application of the rule where no change occurs in the number of shares outstanding is as follows: The Universal Service Co. had 5,000 shares of common stock and no preferred stock outstanding each month for a fiscal year ending June 30, 1920, and during the three months of October, March, and June, the market quotations per share averaged \$150, \$175, and \$200, respectively, there being no other quotations or outside sales to be reported. The total of all quotations, for the three months reported is \$525. This sum divided by the number of months for which quotations are shown (3), will be the average par value per share, or \$175. The average value of the entire stock will therefore be \$175 multiplied by 5,000, or \$875,000.

An example of the application of the rule where a change in the number of shares outstanding during the year does occur is as follows: The Universal Service Co. had 5,000 shares of common and no preferred stock outstanding each month from July 1, 1919, to February 29, 1920. On March 1, 100 new shares of stock were issued as a reward for services to an employee and on June 1, 200 additional shares were issued for a similar consideration, neither of which were of the character of outside sales. During the months of October, 1919, and March and June, 1920, the market quotations per share averaged \$150, \$175, and \$200, respectively. There were no market quotations or outside sale prices available for any of the remaining months. To obtain the average value per share calculate the total value of the outstanding shares each month upon the reported quotations. For October, 1919, the average of the reported quotations was \$150 per share. The total number of shares outstanding during October was 5,000, or a total value of shares outstanding during October of \$750,000. For March, 1920, the average reported quotations was \$175 per share. The total number of shares outstanding during March was 5,100, or a total value therefor of \$892,500. For June, 1920, the average reported quotations was \$200 per share. The total number of shares outstanding during June was 5,300, or a total value therefor during June of \$1,060,000. The total of these monthly valuations must then be divided by the sum of the number of shares outstanding each month. The total of the three monthly valuations for which quotations were reported is \$2,702,500. The number of shares outstanding for October, 1919, was 5,000, March, 1920, 5,100, and June, 1920, 5,300, or a total of 15,400 shares. The fair average value per share will then be the amount of \$2,702,500 divided by 15,400, or \$175.49. The average value of the entire stock will therefore be \$175.49 multiplied by the average number of shares outstanding during the year. This will be, 5,000 shares outstanding for 8 months, or 40,000, plus 5,100 outstanding for 3 months, or 15,300, plus 5,300 outstanding for 1 month, or 5,300, which is a total of 60,000 shares. Divided by 12 to obtain the average for the year this gives an average total of 5,050 shares outstanding for the year. The average value of the entire stock will therefore be \$175.49 per share multiplied by 5,050, or \$886,224.50.

EXHIBIT C.

[¶ 1067] The purpose of this exhibit is to show the value of the stock by capitalizing the earning capacity. It is first necessary to determine the average income to be capitalized. When this is determined in the manner prescribed in the Exhibit and as per instructions on the Return Form, the officers making the return will capitalize the average annual income on a percentage basis that fairly represents the conditions obtaining in the trade in the locality that representative enterprises must earn in order to maintain their stock at par.

The method for determining the average income to be capitalized is worked out in Exhibit C of the Return Form in the following manner, as per the instructions on the Form. Information for each year for a period of five fiscal years ended on the date given in item 7 on page 1 of the Return (or for the period during which the corporation has been engaged in business, if for a shorter period), must be submitted. In one column is shown the net income for each of the five years (or for each of the years during which the company was engaged in business, if for less than five years), corresponding with the fiscal year on which the report is based. The net income reported in this column will be the income returned for the purpose of the income and profits tax for each of said years, and may not necessarily be the net income of those years as per books. Adjustments are then made by way of deductions and

additions, if any, so as to arrive at the actual operating income. Schedules must be attached giving a "comprehensive analysis" of all adjustments made.

In the next column to the right deductions, if any, for each of said years, will be shown. Among the deductions which may be shown in this column are the income and profits tax paid in each of said years which were not deductible in computing income subject to tax. By special ruling of the Deputy Commissioner made in answer to an inquiring taxpayer, it is not necessary to deduct only income and profits tax actually paid in each of said years in order to obtain adjusted net income for Exhibit C, but income and excess profits taxes assessed for such year may be deducted if paid in the following year, or even though not actually paid, if the amount has been definitely determined and explanations are submitted for consideration in the final audit. However, not more than one such tax may be deducted in any single year. Thus, for example, where the taxpayer shows the adjusted net income for a fiscal year ending June 30, 1920, which was the period also to be covered in its annual Income Tax Return not due until September 15, 1920, it may include in the deductions from income of that year the income and profits tax for the fiscal year then closed which is not assessable until the filing of the income and profits tax Return due September 15, 1920. This is permitted since the amount of the income and profits tax for the fiscal year ending June 30 may then be definitely ascertained, even though the Return therefor need not be made until September 15 thereafter, and though actual payment may not be made until the quarterly due dates beginning September 15, 1920, and ending June 15, 1921. If this tax is deducted, the tax paid during such year for the income of the previous year must be deducted from the income of the year ending in 1919, and not the year ending in 1920. Other deductions may be losses not fully deductible in any of said years from taxable income; depreciation or depletion which may have been deducted but for some reason or mistake was not taken; and interest charges not deductible in computing income subject to tax.

In the next column is shown additions to the income of each of said years as reported for income and profits tax purposes. Among the additions which should be shown in this column are dividends received from other corporations in each of said years, not included as income subject to tax; nontaxable income from securities of a State, municipality, or the United States, such as interest on city bonds, or on exempt Liberty Bonds.

The next column for "adjusted income" will reflect the amounts resulting from the adjustment of the amounts shown in the preceding three columns. The item to be inserted in this column for each of said years will be the taxable income reported in column 1 for each year, plus any addition reported in column 3, less any deductions reported in column 2.

The next column should show the total number of shares of all classes of stock outstanding at the close of each of said years. In the next column should be reported the percentage of dividends declared on the par value of each class of stock outstanding each year. The amount represented by the percentages shown in this column must not be deducted from the columns "net income" or "adjusted income." In the next column under "depreciation" will be reported the amount actually charged against income of each of said years in the taxpayer's books of account for depreciation. This amount is not used in obtaining the adjusted income.

The average annual adjusted income will be the sum of the adjusted income items for the five years, or less (where the company was not engaged in business that long), divided by the number of years covered, five or less as the case may be. The Return does not suggest the rate to be used in capitalizing

this average annual income, but states that the officers making the return will use "a percentage that fairly represents the conditions obtaining in the trade in the locality that representative enterprises must earn in order to maintain their stock at par." If enterprises engaged in a similar business must on the average earn 12 per cent on their issued capital stock to keep the value of their stock at par, the average annual adjusted net income will be capitalized by dividing it by 12, or by taking 100/12 thereof. A higher rate means a lower value and a lower tax.

An example of the practical application of the aforesaid requirements to a particular case is given as follows: The Independent Mercantile Co. was a corporation having a capital stock of \$100,000, represented by 1,000 shares of common stock of a par value of \$100 a share. Exhibit C will show the following:

Fiscal year ended	Net Income	Deductions	Additions	Adjusted Income
1915.....	\$10,000.....	\$ 500.....	\$ 100.....	\$ 9,600
1916.....	12,000.....	800.....	none.....	11,200
1917.....	8,000.....	1,000.....	50.....	7,050
1918.....	20,000.....	5,000.....	1,000.....	16,000
1919.....	30,000.....	7,000.....	2,500.....	25,500
Totals.....	\$80,000.....	\$14,300.....	\$ 3,850.....	\$69,350

Average annual income as adjusted, $1/5 \times \$69,350$, or \$13,870, to be capitalized at 10 per cent which is the percentage of average annual income that other representative concerns must earn to keep their stock at par. The fair average value therefore of the stock of the Independent Mercantile Co. as disclosed by this exhibit is 100/10 of \$13,870, or \$138,700. If 15 per cent is regarded as the proper rate the value will be 100/15 of \$13,870, or \$92,466.66.

Comparison is then made with the fair average value of the stock as shown in Exhibits A and B, and the largest of the results in the three exhibits is taken as representing the fair average value on which to compute the tax, unless the Commissioner can be convinced that one of the other two resulting values, or some other method of determining value, more clearly reflects the fair average value of the capital stock. Fair average value, however obtained, is the measure of the tax and no assessment based on anything else is valid.

[¶ 997a] **“Doing business”; Railroads while under Government control.** (T. D. 3156.)—Under Section 407 of the Act of September 8, 1916, every domestic corporation was required to pay annually a special excise tax with respect to the carrying on or doing business equivalent to 50 cents for each \$1,000 of the fair value of its capital stock. The act, approved February 24, 1919, increased the tax to \$1 for each \$1,000 of the fair average value of the capital stock and reduced the exemption from \$99,000 to \$5,000. Questions have been raised as to the liability to the capital stock tax of corporations owning railroads controlled and operated by the Federal Government.

Liability to capital stock tax is made to depend upon whether a corporation “is carrying on or doing business” within the meaning of the taxing act. A corporation which has been organized or chartered to operate a railroad property but which has ceased to operate it by reason of the fact that the property is being operated by the Federal Government is not liable to capital stock tax unless it is carrying on or doing business in connection with other property than its railroad property. The renting of property which was acquired by the corporation as an incident to its railroad business but which was not needed by the Federal Government is not such carrying on or doing of business as would involve the corporation in liability to capital stock tax. (T. D. 3156, approved April 11, 1921.) (The subject matter of “carrying on or doing business” is treated at paragraphs 995-998 of War Tax Service.)

[¶ 984a] **Legality of Act of September 8, 1916.** (T. D. 3160.)—The Treasury Department published a decision of the court of claims rendered February 14, 1921, in the case of the Washington Water Power Co., a corporation, vs. United States, not as a ruling but for the information of Internal Revenue officers and others concerned. The syllabus of the decision is as follows:

1. **Validity of Tax.**—The capital stock tax is an excise tax imposed upon a corporation with respect to the carrying on or doing business by the corporation, which is a proper subject for taxation by the Government, and within its constitutional powers of taxation.

2. **Payment in Advance.**—The capital stock tax imposed by the Act of September 8, 1916, is not illegal because assessed and collected in advance under regulations of the Treasury Department; the act, by Sections 407 and 409, contemplating that a corporation must pay a tax on its capital stock for the preceding year in order to do business for the coming year.

3. **Action to Recover Tax Paid—Maintenance.**—An action to recover a capital stock tax paid in advance, on the ground that advance payment was unauthorized, cannot be maintained where the tax became due and payable under the taxpayer's theory before suit was brought.

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SPECIAL TAXES UPON BUSINESSES AND OCCUPATIONS

AND UPON

THE USE OF BOATS

SECTIONS 1001 (SUBDIVISIONS (1) TO (11) INCLUSIVE)
AND 1003, TITLE X, REVENUE ACT OF 1918

Law,
Regulations No. 59 (Revised), and
Treasury Decisions

Indexed

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LAW,
AND REGULATIONS No. 59
RELATING TO
SPECIAL TAXES UPON BUSINESSES
AND OCCUPATIONS
AND UPON
THE USE OF BOATS

[¶ 1068] **Article 1. Scope of regulations.**—These regulations relate to the special taxes upon businesses and occupations, imposed by subdivisions (1) to (11), inclusive, of section 1001, and upon the use of boats, imposed by section 1003, of the Revenue Act of 1918.

SPECIAL TAXES UPON BUSINESSES AND OCCUPATIONS.

[¶ 1069] **Sec. 1001.** That on and after January 1, 1919, there shall be levied, collected, and paid annually the following special taxes—

[¶ 1070] **Art. 2. Effective date.**—The effective date of the special tax on occupations enumerated in section 1001 of the act is January 1, 1919.

[¶ 1071] **Art. 3. Use of terms.**—In these regulations—for convenience unless obviously inapplicable—

The term “person” shall include partnerships, corporations, and associations as well as individuals;

The term “secondary tax” shall mean the tax imposed on brokers by reason of their ownership of a membership or seat, valued at \$2,000 or more, in a stock or produce exchange, board of trade, or similar organization;

The term “fiscal year” shall mean the period from July 1 of each calendar year to June 30, inclusive, of the following calendar year.

[¶ 1072] **Art. 4. Basis of tax.**—The tax is upon the engaging in or carrying on of a business or occupation. If a person does not engage in or carry on any of the businesses or occupations specified in section 1001 during the taxable period, no special tax liability is incurred. If, however, he does carry on a business upon which a tax is imposed during any portion of the taxable year, he is liable to tax from the first of the month during which he begins business to the end of the taxable period. (See sec. 3237, R. S., as amended by section 53, act of October 1, 1890 [26 Stat., 567].)

[¶ 1073] **Art. 5. Tax paid under former acts.**—Every person who has paid a special tax for the fiscal year ending June 30, 1919, at the rate imposed by the Revenue Act of 1916 is liable to any additional tax which may be imposed by the Revenue Act of 1918, provided he did not permanently discontinue business prior to January 1, 1919. In case special tax has been paid at the rate imposed by the Revenue Act of 1916 such payment covering a period a portion of which falls after January 1, 1919, the effective date of the Revenue Act of 1918, which act imposes a higher rate of tax, credit for the amount of tax paid for the portion of the period falling after January 1, 1919, will be allowed in computing the amount of tax due under the Revenue Act of 1918.

Brokers.

[* 1074] **Sec. 1001. (1)** Brokers shall pay \$50. Every person whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, other securities, produce or merchandise, for others, shall be regarded as a broker. If a broker is a member of a stock exchange, or if he is a member of any produce exchange, board of trade, or similar organization, where produce or merchandise is sold, he shall pay an additional amount as follows: If the average value, during the preceding year ending June 30, of a seat or membership in such exchange or organization was \$2,000 or more but not more than \$5,000, \$100; if such value was more than \$5,000, \$150.

[¶ 1075] Art. 6 (as amended by T. D. 3075). **Brokers: Persons liable.**—Only those persons who have a business of their own as distinguished from that of their employer or employers are liable to special tax as brokers. Any person who holds himself out as a broker and is engaged in the business of negotiating purchases or sales of any of the articles enumerated is liable to tax. It is not necessary that the brokerage business shall be the sole business of a person in order that liability to tax shall attach. Any person who, in connection with his profession or occupation, makes it a regular part of his business to negotiate purchases or sales for others of articles enumerated is liable to tax. Mere casual or incidental negotiation of purchases or sales for others of articles enumerated does not constitute a business for the purpose of the tax. The following among others are subject to special tax as brokers:

(a) Bucket-shop proprietors giving memoranda of transactions to customers. By a "bucket shop" is meant a place, other than a board of trade or exchange, where the parties who agree to buy and sell stocks do not ordinarily contemplate the receiving or delivering of any certificates therefor by the buyer or seller either at the time or in the future;

(b) A bank or any other person which sells checks drawn by another person or concern and in which it has no property interest, if such transactions are engaged in with such frequency and in such a way as to constitute a business;

(c) An agent occupying an independent status and not that of an employee who negotiates the sale of foreign money orders for a steamship company; the fact that he maintains a place where the money orders are issued is evidence of an independent status;

(d) A person, who under an agreement previously made with dealers, engages in the business of issuing orders upon those dealers for certain articles or commodities to parties who desire to purchase such articles or commodities;

(e) One who holds himself out as dealing in exchange, and in the regular course of business accepts orders and takes them to a bank for execution by the latter, receiving substantial remuneration for his services;

(f) An express company engaged in the business of buying or selling foreign money orders or bills of exchange for others;

(g) Persons negotiating for others sales of businesses, where merchandise is included in such sales; if no merchandise is included in the sale, liability is not incurred on account of the inclusion in such sales of good will and legal right to conduct business;

(h) A commission merchant receiving produce or merchandise (including live stock) on consignment, to sell for the account of the consignors;

(i) A dealer in securities of a given kind for the account of an underwriter or other broker;

j) Auctioneers who sell any of the enumerated articles for the account of the owners;

(k) Factors who advance money to farmers on crops which are to be placed with them to be sold on commission.

[¶ 1076] Art. 7 (as amended by T. D. 3075). **Persons not liable.**—The following persons are not subject to special tax as brokers, where the business mentioned herein is the only business conducted by such persons. If, however, coupled with the business mentioned in this article, such person engages in the occupations mentioned in Article 6, or other occupations, to such an extent as to constitute a business, such persons must pay the tax, although

at the same time they engage in other occupations not in themselves such as to subject such person to liability for special tax as a broker.

(a) Any persons who only occasionally or incidentally engage in brokerage transactions;

(b) A person loaning money for himself or for others, on commission;

(c) A bank which does not engage in the negotiating of purchases or sales of stock or bonds as a business, but merely negotiates the purchase and sale thereof for depositors and other patrons without remuneration and for their accommodation only;

(d) A bank which sells its own drafts upon the foreign correspondent of another institution, if it has at the time of the drawing of such drafts credit with such correspondent, or if the drafts are drawn on credit which it is the intent to obtain. Such a bank acts as a principal and not as a broker. A bank which sells drafts or orders drawn by others, if the drafts or orders are sold by the bank as its own property, whether or not it paid cash for them or obtained them under a credit arrangement, likewise acts as a principal and not as a broker;

(e) A bank which effects a financial arrangement to carry out the terms of a sale where the purchaser and seller of merchandise have previously agreed upon the kind and quantity of the merchandise to be sold and upon the terms of the sale;

(f) A person selling securities which he has purchased prior to the sale thereof and which he sells for his own account;

(g) A person dealing in oil leases only;

(h) A person holding a seat in a stock exchange but transacting no business for others;

(i) A person negotiating purchases and sales of real estate;

(j) Persons who receive and negotiate the transmission of money abroad where there are neither purchases nor sales or any money orders, drafts, bills of exchange or any other instruments constituting exchange;

(k) A person negotiating loans and requiring the borrowers to pay a commission to the person securing the loan, drawing papers, or examining titles;

(l) Railway agents who exchange foreign money for American money and vice versa, merely in the transaction of the freight and passenger business of their company;

(m) A loan and mortgage company which loans its own funds, upon notes or bonds secured by mortgage or trust deed of real estate and which subsequently sells such notes or bonds so taken, on its own account and for its own profit or loss;

(n) A person employed by a coal company, as agent to negotiate sales of coal for the company on a commission basis;

(o) A traveling or other salesman who has no business of his own, but is an employee of the firm or firms which he represents;

(p) Persons who buy or sell Liberty Bonds or other securities for themselves, purchasing them with their own money, title to the securities actually passing to or being in such person;

(q) A person engaged in the business of placing loans secured by notes and mortgages upon real estate, acting only as agent and receiving a commission for his services;

(r) Agents of mills or factories who are in fact the sales department of the mills or factories and perform such services as selling the goods, determining what fabrics or products the mill or factory can best make, designing fabrics, indorsing notes of the mill or factory, and otherwise financing the mill or factory or providing expert advice to it;

(s) Persons having territorial rights for the sale of articles placed in their possession, when sold in their own names;

(t) A corporation selling its own stock through its own employees who are acting under its exclusive supervision and control;

(u) Persons engaged in the business of buying and selling tickets.

[¶ 1077] **Art. 8. Secondary tax.**—A broker who owns seats in different exchanges is liable to the secondary tax upon the value of a seat (valued at \$2,000 or more) in each exchange. A broker who owns a number of seats in the same exchange is liable to the secondary tax upon only the value of a single seat. A partnership or corporation doing a brokerage business is liable to both the primary and secondary tax to the same extent as an individual. It is immaterial that the seat in the exchange through which the partnership transacts business is held in the name of an individual. Where two or more members of a partnership doing a brokerage business own seats in the same exchange and all the business transacted by such partners is for the partnership the partnership is liable to the secondary tax upon the value of only a single seat in the exchange. Where all the trading done by the members of a firm or partnership is for the firm or partnership but one payment of special tax is required. If, however, at any time purchases or sales of securities are made for others upon a commission basis by any member of the firm or partnership for his own account and not for the account of the firm or partnership special tax liability is incurred by the individual; secondary tax liability is also incurred provided the individual owns a membership or seat (valued at \$2,000 or more) in a stock or produce exchange, board of trade, or similar organization. For example, A, B, and C, members of a partnership, each own a membership in the same exchange; but one special tax and one secondary tax are due so long as all the trading is done for the partnership; but if any one of the members accepts individual commissions then such member is individually liable to special tax and secondary tax in addition to the tax imposed on the partnership. Where the possession of a share of stock is a prerequisite to membership in a stock exchange a lessee of a share of stock in such exchange actually carrying on a brokerage business is liable to the secondary tax and not the lessor of the share. The secondary tax on a membership in a stock or produce exchange should be paid in the district where special tax as a broker is paid; for example, a broker in Boston is a member of the New York Stock Exchange and subject to secondary tax by reason of such membership. Such secondary tax should be paid to the collector of the district in which Boston is located and not to the collector of the district in which the New York Exchange is located, unless such broker maintains a branch office in New York and pays special tax therefor.

[¶ 1078] **Art. 9 (as amended by T. D. 3075). Branch offices.**—Inasmuch as the payment of one special tax cannot cover the doing of business by a broker in branch offices, a broker who maintains such branch offices is required to pay a special tax in respect of the main office and of each branch office where a brokerage business is conducted. The special tax is not required in the case of a branch office similar to the smaller offices frequently located in hotels where the duties of the clerks employed are restricted to the taking of orders, and their transmission to the main office without transacting any

other business. The special tax must be paid, however, with respect to branch offices or brokers that are equipped to do and who actually do a brokerage business. A branch office, organized for the transaction of business, which receives orders, disburses funds and renders statements to its customers, must pay the special tax provided. The distinction to be drawn is whether a brokerage business is transacted at the branch office. It is considered that business is so transacted unless the activities of the branch house are restricted to the receipt of orders and money for transmission to the parent house and to the disbursement of such funds only as are received from the parent house with specific, detailed instructions as to their disposition.

Pawnbrokers.

[¶ 1079] (Sec. 1001.) (2) Pawnbrokers shall pay \$100. Every person whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be regarded as a pawnbroker.

[¶ 1080] Art. 10. **Pawnbrokers: Delivery.**—Delivery of personal property as security for the repayment of money loaned thereon is necessary to incur liability to special tax as a pawnbroker. By agreement of the parties the pledge may be deposited in the hands of a third person instead of being delivered to the pawnbroker.

[¶ 1081] Art. 11 (as amended by T. D. 3036). **Persons liable.**—The following persons are liable to tax as pawnbrokers:

(a) A person using no tickets in his business, but making a pretense of buying articles which are brought to him which he holds under a verbal agreement that the articles can be bought back again by the person selling them upon the payment of a specified bonus;

(b) A concern though called a bank which has practically no deposits and almost its entire business is the loaning of money on automobiles secured by warehouse receipts.

[¶ 1082] Art. 12. **Persons not liable.**—A person is not required to pay a special tax as a pawnbroker for occasional or incidental acts which can not be regarded as constituting his business or occupation. Banks doing a bona fide banking business are not required to pay tax as pawnbrokers in cases where they accept diamonds or jewelry or other personal property as collateral security for the making or extension of loans if such loans are made on the same conditions and at the same rate of interest as other loans, provided such loans comprise the smaller portion of the loan business of the bank. Bankers who are able to show that they did not invite or cater to persons desiring to borrow money on articles of personal property, but merely made such loans upon request of and to oblige persons doing other business with them or who have taken such property as security only to save themselves from loss in connection with loans previously made are not liable to the special tax. The special tax on pawnbrokers is not required to be paid for making loans on chattel mortgages or in any case where chattels or personal property are not taken or received by way of pledge, pawn, or exchange.

Ship Brokers.

[¶ 1083] (Sec. 1001.) (3) Ship brokers shall pay \$50. Every person whose business it is as a broker to negotiate freights and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a ship broker.

[¶ 1084] Art. 13. **Ship brokers: Persons liable.**—Persons engaged in the business of negotiating freights and business of a similar kind and character

for the owners of vessels or for the shippers or consignors or consignees of freight carried by vessels are subject to tax as ship brokers. Liability to tax is not incurred unless the work performed is of the same general character as the negotiation of freights. Persons acting as agents for ship owners in finding charterers for their ships or as agents for charterers in finding ships available for charter are ship brokers. A person whose business it is to furnish sailors on a commission basis or for a flat rate for each sailor furnished is not a ship broker. An express company which undertakes for a lump sum to deliver freight at some foreign port and makes arrangement with various railroad and steamship lines on its own account and not as the agent of the shippers for the transportation of such freight is not a ship broker. A person who as an agent of the consignee attends to the proper forwarding of goods consigned to domestic or foreign ports, sees that proper inspection is made and manifests issued is not a ship broker, but a customhouse broker. A person performing both the duties of a ship broker and a customhouse broker is subject to the special tax of both a ship broker and a customhouse broker.

Customhouse Brokers.

[¶ 1085] (Sec. 1001.) (4) Customhouse brokers shall pay \$50. Every person whose occupation it is, as the agent of others, to arrange entries and other customhouse papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a customhouse broker.

[¶ 1086] Art. 14. **Customhouse brokers: Persons liable.**—A person or firm holding himself or itself out to the public as engaged in the occupation of customhouse broker either by maintaining an office or sending out literature or advertising matter is required to pay special tax as a customhouse broker. If the business of such a person is transacted by employees at offices at different ports, a separate and distinct special tax must be paid for each office. A special tax stamp taken out by a person in his own name as a customhouse broker is sufficient to cover the business done by him in his own name at the place of business stated therein whether such business is done by him on his own account or as an agent for other persons. Persons whose occupation it is as agents of others to enter and clear vessels in the customhouse are not relieved from special tax as customhouse brokers on the ground that they have paid special tax as ship brokers. A railroad or other corporation operated by the United States and acting as the agent of others to arrange entries and other customhouse papers acts in a governmental capacity and is not liable to made;

Theaters, Museums, and Concert Halls.

[¶ 1087] (Sec. 1001.) (5) Proprietors of theaters, museums, and concert halls, where a charge for admission is made, having a seating capacity of not more than two hundred and fifty, shall pay \$50; having a seating capacity of more than two hundred and fifty and not exceeding five hundred, shall pay \$100; having a seating capacity exceeding five hundred and not exceeding eight hundred, shall pay \$150; having a seating capacity of more than eight hundred, shall pay \$200. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls or armories rented or used occasionally for concerts or theatrical representations, and not including edifices owned by religious, educational or charitable institutions, societies or organizations where all the proceeds from admissions inure exclusively to the benefit of such institutions, societies or organizations or exclusively to the benefit of persons in the military or naval forces of the United States, shall be regarded as a theater: Provided, That in cities, towns, or villages of five thousand inhabitants or less the amount of such payment shall be one-half of that above stated: Provided further, That whenever any such edifice is under lease at the time the tax is due, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to the lease.

[¶ 1088] Art. 15. **Theaters, museums, and concert halls: Persons liable.**—The tax is upon the business of operating a theater, museum, or concert hall

where a charge for admission is made. A person owning a theater which is not used at any time during the taxable year is not liable to tax. A "proprietor" of a theater, museum, or concert hall is the owner of such a building, or the lessee or tenant if the building is leased or rented. The owner is liable for the special tax unless the building is under lease at the time the tax is due, in which case the tax shall be paid by the lessee unless otherwise stipulated between the parties to the lease. (See article 21.) The tax is upon each theater operated by the proprietor. If the same proprietor has theaters in different internal-revenue districts, the tax due upon each theater must be paid in the district in which such theater is located.

[¶ 1089] Art. 16. **"Charge for admission."**—By a "charge for admission" is meant a charge for the right or privilege to enter or remain in a theater, museum, or concert hall for a limited time. No liability to tax is incurred by a proprietor on account of the giving of moving-picture exhibitions or concerts where no admission fee is charged and only collections are taken up, persons in the audience contributing if they see fit.

[¶ 1090] Art. 17. **Theater defined.**—Only an "edifice" (a building or structure of a permanent character) used for the purpose of dramatic or operatic or other representations, plays, or performances for admission to which entrance money is received is to be regarded as a theater. A railroad car or boat fitted up as a theater and traveling about from place to place is to be regarded as an edifice. An open-air theater with a permanent roof over the audience or the stage is an edifice, but an airdome or tent is not. Where the proprietor of a theater operates a theater at one location and an airdome at another location he is subject to tax under this subdivision with respect to the operation of the theater and under subdivision (7) upon the operation of the airdome. Where an airdome is operated in connection with a theater, the same ticket admitting a patron to either the theater or airdome, a special tax stamp under this subdivision is required for the theater and one under subdivision (7) for the airdome.

[¶ 1091] Art. 18. **Halls or armories rented occasionally.**—Halls or armories rented occasionally for the purpose of dramatic or operatic or other representations, plays, or performances for admission to which a charge is made are exempt from tax. Liability to tax is not determined by the average number of times per month that such a hall or armory may be rented for dramatic representations, but upon the primary usage of the hall or armory for such representations. The proprietor of an exhibition or show for money renting the hall or armory is liable to tax under subdivision (7).

[¶ 1092] Art. 19. **Theaters open for part of year only.**—Where theaters are entirely closed to performances during the months of July and August and open in the month of September the special tax is to be reckoned from the first day of September to the last day of June following at the specified annual rate—that is, for 10 months. Where a theater is closed before the end of a fiscal year, the stamp issued has no redeemable value.

[¶ 1093] Art. 20. **Seating capacity.**—Where seats consist of boards or benches, seating capacity should be ascertained by allowing space for each spectator of the same width as the inside measurement of the average or standard theater chair. Where, after payment of special tax at a certain rate, the seating capacity of a theater is increased beyond that which the tax previously paid is sufficient to cover, an additional amount must be paid as special tax equal to the difference between the amount of tax due upon the enlarged theater and the value of the old special tax stamp, computed from the first

day of the month in which the seating capacity of the theater was increased to June 30 following. For example:

Special tax due and paid July 1, 1919.....	\$ 50.00
Seating capacity increased Oct. 10, 1919 (new rate).....	100.00
Difference.....	\$ 50.00

Since nine months are remaining in the fiscal year from the date of October 1, the additional tax due is nine-twelfths of \$50, or \$37.50, which amount must be paid to the collector and evidenced by receipt on Form 1. This receipt must be posted with the special tax stamp in the place of business of the holder until the close of the fiscal year, when a new special tax stamp for the succeeding fiscal year must be procured. Where a special tax stamp "at large" is issued to a proprietor of a traveling theater having a seating capacity of more than 250 and not exceeding 500 the stamp is good for any theater having a seating capacity of not exceeding 500. No new liability is created when the proprietor gives a performance in a theater with a seating capacity of less than 250. If, however, he gives a performance in a theater having a seating capacity of more than 500, liability at the increased rate of tax is incurred.

[¶ 1094] Art. 21. **Transfer of stamp.**—A special tax stamp taken out by the proprietor of a theater who transfers his interest to another person can not be transferred and made to answer for such other person in conducting the theater. A special tax stamp is personal to the one to whom issued. Upon request to the collector he may have the stamp transferred from one place of business to another. Thus, if a proprietor of a theater closes it during the summer season he may have his stamp transferred to a summer theater, provided the seating capacity of such theater is not greater than that of his other theater; if the seating capacity of the summer theater is greater than that of his other theater, the proprietor will be required to pay an additional tax, measured by the difference in seating capacity. The proprietor of a summer theater who operates another theater during the winter season may likewise have his special tax stamp transferred from his summer theater to his other theater.

[¶ 1095] Art. 22. **Population.**—In determining population of cities, towns, or villages latest United States census figures are to be used, unless a State census has been taken more recently, in which case the State census figures shall be used.

Circuses.

[¶ 1096] (Sec. 1001.) (6) The proprietor or proprietors of circuses shall pay \$100. Every building, space, tent, or area, where feats of horsemanship or acrobatic sports or theatrical performances not otherwise provided for in this section are exhibited shall be regarded as a circus: Provided, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District.

[¶ 1097] Art. 23. **Circuses: Persons liable.**—Exhibitions or feats of horsemanship which occur on race tracks are subject to a special tax of \$100; but mere tests of speed of horses in racing or jumping contests are not regarded as feats of horsemanship within the meaning of the statute. The "theatrical performances" contemplated by this subdivision are only those which are given in connection with a circus. A show under canvas exhibiting among other things acrobatic and athletic exercises, but no feats of horsemanship, and having no menagerie, is not subject to special tax as a circus if these exercises are few and simple, but is taxable under subdivision (7). A small wagon show having no "circus feats," but only trapeze performing, wire walking, trained ponies, singing, and dancing, is not to be regarded as a circus, but is taxable under subdivision (7). A "round-up" and like contests in which the contest-

ants are from the locality, sponsored and financed by citizens of the community, are not circuses even though feats of horsemanship are shown and no tax liability as a circus is incurred. A Wild West show is taxable as a circus. Side shows at circuses are liable to tax under subdivision (7).

[¶ 1098] Art. 24. **Payment in different States.**—Where a circus is exhibiting in any State in the month of July the special tax of \$100 is required to be paid for the year beginning July 1. If in the following month the circus goes into another State the special tax at the rate of \$100 for the year is to be reckoned from the first day of August to the last day of June following, and a separate special tax stamp must be taken out for that State, and for every other State, Territory, or District in which performances are given. If a circus, after leaving a State in which special tax has been paid, returns before the close of the fiscal year, no further special tax is due.

Other Public Exhibitions or Shows.

[¶ 1099] (Sec. 1001.) (7) Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay \$15: Provided, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia: Provided further, That this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or charitable associations: Provided further, That an aggregation of entertainments, known as a street fair, shall not pay a larger tax than \$100 in any State, Territory, or in the District of Columbia.

[¶ 1100] Art. 25. **Other public exhibitions or shows for money: Taxable exhibitions.**—Proprietors or agents of all public exhibitions or shows for money not enumerated in the two previous subdivisions are liable to tax under this subdivision. The proprietors of the following exhibitions or shows are liable to tax under this subdivision:

(a) An airdome or summer theater which has no roof over the auditorium or stage;

(b) A theatrical troupe traveling around the country and giving performances in halls or auditoriums for which special taxes have not been paid by the owners or lessees thereof;

(c) An open-air picture exhibition for admission to which a charge is made.

(d) An exhibition or show given on fair grounds but not under the management of the fair association;

(e) A side show at a carnival or circus to which an admission fee is charged;

(f) A dancing pavilion upon a pier where a charge is made for the privilege of going upon the pier as spectators;

(g) A public dance hall, if a charge is made to persons who attend as spectators;

(h) An illustrated lecture to which an admission fee is charged;

(i) Baseball games by professionals or semiprofessionals to which an admission fee is charged;

(j) Concert gardens where no admission fee is charged but where drinks are sold and stage and other entertainments are given.

[¶ 1101] Art. 26. **Exhibitions not taxable.**—Subdivision (7) specifically provides "that this paragraph shall not apply to Chautauquas, lecture lyceums, agricultural or industrial fairs, or exhibitions held under the auspices of religious or charitable associations." Illustrated lectures or other exhibitions given by bona fide lecture lyceums or Chautauquas in a tent or other place

during the usual Chautauqua or lecture lyceum season are exempt from tax. Exhibitions or shows given by an agricultural or industrial fair association in connection with the conduct of a fair are likewise exempt from tax. It is immaterial whether a separate charge is made for admission to such exhibitions or shows. Where, however, an exhibitions or show, for admission to which a charge is made, is conducted on the fair grounds, but is not given by the fair association, the proprietor of such exhibition or show is liable to special tax. Special tax is not required to be paid by proprietors of restaurants or cafes employing orchestras during the meal hours for the entertainment of patrons. Amateur theatrical exhibitions either in private houses or in licensed public halls to which an admission fee is charged to cover expenses incurred in giving the exhibition, and not for the pecuniary profit of the performers or the manager, are not such performances as are subject to special tax. Owners or agents of theatrical troupes giving performances only in halls or auditoriums for which special taxes have been paid by the owner or lessee thereof are not subject to tax. Persons conducting stands and raffling devices at beaches, summer resorts, and similar places, at which no charge is made for admission but only a charge for taking a chance, are not subject to the tax. This is also true of merry-go-rounds, shoot-the-chutes, and similar amusement devices.

[§ 1102] Art. 27. **Aggregation of entertainments.**—An aggregation of entertainments known as a street fair is not subject to a larger tax than \$100 in any State, Territory, or the District of Columbia. When seven or more separate entertainments are under the same management and are conducted in connection with a street fair, the total amount of tax payable shall not exceed \$100. These aggregations usually include such exhibitions or shows as "pit shows," "rides," "dare-devil entertainments," imitation Wild West shows, or trained animals. A special tax stamp has been provided for such aggregations.

Bowling Alleys.

[§ 1103] (Sec. 1001.) (8) Proprietors of bowling alleys and billiard rooms shall pay \$10 for each alley or table. Every building or place where bowls are thrown or where games of billiards or pool are played, except in private homes, shall be regarded as a bowling alley or a billiard room, respectively.

[§ 1104] Art. 28. **Bowling alleys: Scope of tax.**—In every building or place where bowls are thrown each division or track is a separate alley, for which a special tax must be paid. Proprietors of bowling alleys and billiard and pool tables in clubs, Y. M. C. A. buildings, hotels, fraternity houses, lodge rooms, State armories, fire houses, and similar places are subject to special tax unless the bowling alley or billiard and pool tables are supported out of funds contributed by a State or a subdivision of a State. The Italian game of "Boccie" is taxable under this subdivision. Bagatelle and tivolli tables and Japanese rolling ball games are not subject to tax. No liability is incurred where tables or alleys are not actually used, in which case pins and bowls should be removed from alleys and cushions from tables. The person for the time being in possession or control of a billiard table or bowling alley is prima facie the proprietor of the alley or table and liable to the special tax even if the property and ultimate control of the table and place where it is located are in some one else. A "private home" is held to be an individual or family residence.

[§ 1105] Art. 29. **Transfer of special tax stamp.**—When a person who has taken out a special tax stamp for a bowling alley closes the alley and thereafter opens another the stamp may be transferred to the latter.

Shooting Galleries.

[¶ 1106] (Sec. 1001.) (9) Proprietors of shooting galleries shall pay \$20. Every building, space, tent, or area, where a charge is made for the discharge of firearms at any form of target shall be regarded as a shooting gallery.

[¶ 1107] Art. 30. **Shooting galleries: Persons liable.**—Every person who is in possession and control of any building, space, tent, or area where a charge is made for the discharge of firearms at any form of target is liable to tax. A club which charges annual dues and in addition makes a charge to cover operating expenses of a shooting range is liable to tax. The tax attaches in the case of a gun club where the membership dues specifically cover participation in shoots or tournaments.

Riding Academies.

[¶ 1108] (Sec. 1001.) (10) Proprietors of riding academies shall pay \$100. Every building, space, tent, or area, where a charge is made for instruction in horsemanship or for facilities for the practice of horsemanship shall be regarded as a riding academy.

[¶ 1109] Art. 31. **Riding academies: Liability to tax.**—Only a proprietor of a riding academy who maintains a building, space, tent, or area where a charge is made for instruction in horsemanship or for facilities for the practice of horsemanship is liable to tax. Persons who are engaged merely in letting saddle horses are not liable to tax.

Passenger Automobiles.

[¶ 1110] (Sec. 1001.) (11) Persons carrying on the business of operating or renting passenger automobiles for hire shall pay \$10 for each such automobile having a seating capacity of more than two and not more than seven, and \$20 for each such automobile having a seating capacity of more than seven.

[¶ 1111] Art. 32. **Passenger automobiles: Basis of tax.**—The tax is upon the business of operating or renting passenger automobiles for hire, and is based upon the number of cars operated or rented and the seating capacity of each car. It is upon the total number of cars operated and not upon the average number operated. The tax attaches to a person operating a hotel bus for the carriage of passengers between railroad stations and hotels, provided a separate charge is made for the service. The tax should be paid for automobiles used for carrying passengers, based upon the seating capacity of the whole car, unless a portion of it is set off and is of such design that it can not readily be used for passengers. In computing seating capacity the driver's seat is to be included. Motor trucks used for carrying passengers for hire are liable to tax, and unless evidence is furnished which conclusively shows that such trucks can not accommodate more than seven persons the owners are liable to the special tax of \$20 for each. Persons operating or renting passenger automobiles for hire during a strike of street railway employees are liable to the tax. Automobile ambulances and automobile hearses are not considered passenger automobiles within the purview of this subdivision. Liability is not incurred through the occasional carrying of a passenger in an automobile for hire provided the owner or operator does not hold himself out to the public as engaged in the business of carrying passengers. A person, however, who habitually carries passengers for hire whenever the opportunity presents or the capacity of his car permits is liable to tax.

[¶ 1112] Art. 33 (as amended by T. D. 2981). **Special tax stamp.**—The special tax stamp or stamps issued must cover the total tax liability of the taxpayer at the time the stamp or stamps are taken out. He must secure a stamp for each car operated. A taxpayer does not incur an increased liability to tax by reason of replacing a car with a new car, unless the new car has a larger seating capacity than the car replaced and is subject to a higher rate of

tax. For example, a person engaged in the business of operating passenger automobiles for hire owns 40 machines, each of them carrying more than 2 but not more than 7 passengers. He takes out a special tax stamp on each of the 40 machines covering his total liability. In February he sells seven of his machines and purchases new ones of the same seating capacity or of a seating capacity of not more than 7. In such case no additional special tax liability is incurred. If, however, he should replace his old machines with machines carrying more than 7 passengers, his liability would be new and distinct, and a new special tax stamp at the \$20 rate would be required for the operation of each new automobile, beginning with the first day of the month in which additional liability was incurred and ending with the following June 30. The purchaser of a passenger automobile for the operation of which special tax has been paid by the previous owner does not acquire the right to operate the automobile under the special tax stamp which was issued to the previous owner. The special tax stamp or stamps issued must be conspicuously posted in the place of business of the person operating or renting passenger automobiles. Automobiles in respect of which special tax has been paid may be operated at any place in the United States so long as the owner of the car remains the same. When a special tax stamp is issued, the engine number of the car or cars covered by the stamp shall be registered with the collector issuing the stamp, who, in addition to the stamp, will issue a receipt card for each car which will bear the number corresponding to that on the engine of the car for which issued, and this receipt shall be carried by the operator at all times. The operation of a car without a receipt card or with a receipt card bearing a different engine number than that on the engine of the car operated, shall be *prima facie* evasion of tax. Any replacement of a car must be likewise registered with the collector and a new receipt card will be issued in lieu of the card originally issued for the car which the new car replaces.

It is not considered necessary nor is it desirable to put the license-tag number on the receipt card issued with the stamp, owing to the fact that the stamp shows payment of tax for a fiscal year, while auto license tags usually cover a calendar year. The engine number on the card will be sufficient. This will obviate the necessity of obtaining a new card when the tag is changed. However, it will be necessary to obtain a new card in all cases where, for any reason, a different car is replacing an old one.

Special Taxes Upon the Use of Boats.

[¶1113] **Sec. 1003.** That sixty days after the passage of this Act, and thereafter on July 1 in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July 1, there shall be levied, assessed, collected, and paid in lieu of the tax imposed by section 603 of the Revenue Act of 1917, upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade, fishing, or national defense, or not built according to plans and specifications approved by the Navy Department, a special excise tax to be based on each yacht or boat, at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, of over five net tons, length not over fifty feet, \$1 for each foot; length over fifty feet and not over one hundred feet, \$2 for each foot; length over one hundred feet, \$4 for each foot; motor boats of not over five net tons with fixed engines, \$10.

In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of over-all length shall govern.

In the case of a tax imposed at the time of the original purchase of a new boat on any other date than July 1, and in the case of the tax taking effect sixty days after the passage of this Act, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months (including the month of sale, or the month in which is included the sixty-first day after the passage of this Act, as the case may be) remaining prior to the following July 1.

If the tax imposed by section 603 of the Revenue Act of 1917, for the fiscal year ending June 30, 1919, has been paid in respect to the use of any boat, the amount so paid shall under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, be credited upon the first tax due under this section in respect to the use of such boats, or be refunded to the person paying the first tax imposed by this section in respect to the use of such boat.

[¶ 1114] Art. 34. **Effective date.**—The effective date of the tax on boats is April 26, 1919. This tax is in lieu of a similar tax imposed by section 603 of the Revenue Act of 1917.

[¶ 1115] Art. 35. **Taxable period.**—The first taxable period is from April 1, 1919, or from the date of the original purchase of a new boat by a user, to June 30, 1919, inclusive. Succeeding taxable periods cover the fiscal year beginning July 1 and ending June 30 of the succeeding year.

[¶ 1116] Art. 36. **Basis of tax.**—The tax is based on use and not on mere possession or ownership. Liability to tax begins from the first day of the month in which the boat is used. Thus, if the first use of a boat is on April 27, 1919, the liability to tax begins on April 1, 1919. A boat which is not used at all during a fiscal year is not subject to tax for that period notwithstanding the fact that it might have been liable to tax in the preceding fiscal year. A boat which is not placed in use during the first part of the fiscal year is not liable to the tax for the period during which it was not in use, except to the extent of becoming liable from the first of the month during which it was placed in use. Once liability has been incurred at some time during a fiscal year the tax must be paid from the first of the month during which the boat was first placed in use until the close of the fiscal year, and no refund will be made notwithstanding the fact that during some subsequent period of such fiscal year the boat may not be in use.

[¶ 1117] Art. 37. **Persons liable.**—The owner, lessee, or charterer of a boat is liable for the tax.

[¶ 1118] Art. 38. **Boats taxable.**—The tax is imposed upon the use of "yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade, fishing, or national defense, or not built according to plans and specifications approved by the Navy Department." Boats falling in the above classes and not specifically exempt are liable to tax regardless of size. Boats used in the United States are subject to the tax, although of foreign register. Boats navigating United States waters are subject to the tax, although owned by nonresident aliens. But boats owned by nonresident aliens and operating only occasionally in American waters are exempt from tax.

[¶ 1119] Art. 39. **Boats exempt from tax.**—Boats used "exclusively for trade, fishing, or national defense, or * * * built according to plans and specifications approved by the Navy Department," are exempt from tax. Any boat which is used exclusively in connection with a person's business, occupation, or profession is exempt from tax. A boat used (1) by a physician in calling upon patients; or (2) by a farmer to take produce to market, farming constituting the means of livelihood of the owner of the boat; or (3) by an owner in the course of his employment to tend channel lights on a barge canal; or (4) regularly in service in the carriage of the public; or (5) by a marine engine manufacturer in transporting salesmen on their business trips or in taking out prospective customers purely for demonstrating purposes; or (6) in towing disabled boats and furnishing repair service to customers is exempt from the tax. A houseboat without means of propulsion is also exempt from tax. The term "fishing" as used in the statute has reference to commercial

fishing and not to fishing for pleasure. Casual employment at irregular intervals for the convenience of the owner or his family, not exceeding such casual employment as is usual for boats maintained or employed in trade, will not cause the tax to attach to a boat which is entirely devoted to trade except for such limited casual use. A boat under 5 net tons, equipped with an "Evinrude" or any other type of "outboard" or "overboard" motor which can be attached or detached at will is exempt from tax.

[¶ 1120] Art. 40. **Purchase or use of secondhand boats.**—If a person purchases a secondhand boat on which special tax has already been paid, he is not liable to special tax upon the use of the boat during the balance of the fiscal year. The tax is on the use of the boat and the special tax stamp passes with it. The adjustment of the tax between the vendor and the vendee is a matter of individual contract in which the Government has no concern. If a person leases or charters a boat upon which the tax has been paid, the lessee or charterer is exempt from tax on the use of the boat during the remainder of the fiscal year.

[¶ 1121] Art. 41. **Rate and computation of tax.**—The boats enumerated in the act are divided into four classes with respect to tonnage and length, and a separate rate of tax is provided for each class, as follows:

- (1) Over 5 net tons, length 50 feet or less, \$1 for each foot.
- (2) Over 5 net tons, length over 50 feet but not over 100 feet, \$2 for each foot.
- (3) Over 5 net tons, length over 100 feet, \$4 for each foot.
- (4) Motor boats of not over 5 net tons with fixed engines, irrespective of length, \$10 flat rate.

To compute the amount of tax in any given instance multiply the rate of the class in which the boat is included by the number representing the length over all in full feet. For example: A boat 49.5 feet in length would be included in class 1 and would be taxed at the rate of \$1 for each foot, or \$49: a boat 50.5 feet in length would also be included in class 1 and would be taxed at the rate of \$1 for each foot, or \$50.

[¶ 1122] Art. 42. **Tonnage.**—To estimate the net tonnage of a vessel, the following rules may be used:

- (a) By the word "ton" is meant 100 cubic feet of space.
- (b) Multiply the extreme length of the vessel by the extreme breadth and that product by the depth from the underside of the deck to the frame in the hold taken amidships. The result obtained should be multiplied by six-tenths. To this result should be added the cubical contents of any closed-in structure above the upper deck. The sum should be divided by 100, which will give the approximate gross tonnage of the boat.
- (c) From this gross tonnage may be deducted all spaces used exclusively in connection with the navigation of the boat or for machinery space, space for officers and crew but not for passengers (who include all persons not actual members of the crew), storage of sails, navigation instruments, boatswain's stores, etc. The result will be the approximate net tonnage of the boat.
- (d) For the purpose of determining the tonnage of open boats the space within the boat level with the outer rails will be considered, and no deductions for machinery or crew will be made.

If the net tonnage thus estimated is more than 4 net tons, application should be made to the nearest customs officer for official admeasurement. If an official admeasurement is not completed before the date on which a return is required, a return should be rendered; and if the estimate of net tonnage, made as above directed, is over 5 net tons, the tax should be paid. If an official admeasurement is being made or has been requested but not completed on the

date set for filing return, the taxpayer should file his return on the date set by the law and regulations, accompanied by a remittance in an amount which he has determined is due. The collector will, upon receipt of such return and remittance, deposit the remittance as an advance collection in his stamp account, but will not order an improvised stamp for the taxpayer until the official admeasurement has been completed. If the tax due as shown by such official admeasurement is greater than that already paid by the taxpayer such taxpayer should be called upon for an additional amount sufficient to cover his total liability. When this additional amount is received the collector will then order an improvised stamp of the proper denomination. If the amount of tax is found to be the same as or less than the amount remitted by the taxpayer the collector will order an improvised stamp of the proper denomination, take credit in his stamp account for any excess remittance, and transfer this balance to his Sales Tax Assessment List, entering same as an advance collection

thereon. The collector will then file a claim on Form 751 for refund of the amount so paid in excess. By this method a taxpayer will not be burdened with the necessity of purchasing a new special tax stamp in the proper amount and returning the original stamp for redemption, but will receive a stamp in the proper denomination in the first instance.

[¶ 1123] Art. 43. **Over-all length.**—Over-all length is defined as the extreme length of the structure—i. e., from the forward side of the stem outside the planking or plating to the aftermost side of the stern planking or plating, whether above or below the water line. The measurement should be to the outside of any planking or plating extending above the deck, constituting bulwarks, and to the outside of any forecastle deck, quarter deck, or poop deck extending beyond the main deck. The length should be taken in a straight line, excluding any sheer there may be to the deck.

[¶ 1124] Art. 44. **Return and payment of tax.**—Every person liable to special tax must, during the month in which his liability begins, file with the collector for his district a sworn return on Form 732 (revised), which shall show the amount of the tax due. If the amount of the tax covered by the return is not in excess of \$10 the return may be signed or acknowledged before two witnesses instead of under oath. Instructions for filling out Form 732 (revised) will be found on the back of the form. The return due for the fiscal year ending June 30, 1920, must be filed during the month of July, 1919, provided the boat is used during the month of July, 1919. If exemption is claimed, the return should be executed in full and "exemption claimed" noted across the face of the return.

[¶ 1125] Art. 45. **Stamp or card certificates.**—When tax is paid a special tax stamp indicating payment and a card certificate showing the name or other description of the boat will be issued. If exemption is allowed, an exemption card (Form 725) will be issued. The card certificate or exemption card issued must be kept on board whenever the boat is in use, and must be shown on demand to any officer or agent of the internal revenue or navigation service.

[¶ 1126] Art. 46. **Credits.**—A person who has paid the tax imposed by section 603 of the Revenue Act of 1917 upon the use of a boat, and who is subject to an additional tax under the Revenue Act of 1918, is required to pay only the amount of the additional tax imposed by the Revenue Act of 1918. For example: If the tax due for the month of April and June, 1919, under the Revenue Act of 1918, is \$2.50, and the taxpayer has paid a tax under the Revenue Act of 1917 of \$5 covering the fiscal year ending June 30, 1919, he is entitled to a credit of one-fourth of the amount of tax paid for the fiscal year, or \$1.25 against the \$2.50 due under the Revenue Act of 1918; the additional tax required to be paid by him is \$1.25. A person who has disposed of his boat prior to April 26, 1919, is not required to pay any additional tax under the Revenue Act of 1918.

PROVISIONS OF LAW AND REGULATIONS PERTAINING TO SPECIAL TAXES.

[¶ 1127] Art. 47. **Special taxes.**—The taxes imposed by sections 1001 and 1003 of the Revenue Act of 1918 are "special taxes," and taxpayers are subject, under these sections, to all applicable provisions of the internal-revenue laws now in force and effect.

[¶ 1128] Art. 48. **Business to be registered.**—Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In

case of a firm or company, the names of the several persons constituting the same, and their places of residence, shall be so registered. (Sec. 3233, R. S.)

[¶ 1129] Art. 49. **Partnerships.**—Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax. (Sec. 3234, R. S.)

[¶ 1130] Art. 50. **Payment of one special tax not to cover several places of business.**—The payment of the special tax imposed does not exempt a person carrying on a trade or business in any other place than that stated in the collector's register from the payment of an additional special tax on the doing of such business; but a special tax is not required for the storage of goods, wares, or merchandise in other places than the place of business, nor for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business. (See sec. 3235, R. S.)

[¶ 1131] Art. 51. **More than one pursuit carried on in the same place of business.**—Whenever more than one of the pursuits or occupations subject to special taxes are carried on in the same place by the same person at the same time, the tax shall be paid for each according to the rates severally prescribed. (See sec. 3236, R. S.)

[¶ 1132] Art. 52. **When special tax becomes due.**—All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year; and in the latter case it shall be reckoned proportionately from the first day of the month in which the liability to a special tax commenced to the first day of July following. (See sec. 3237, R. S., as amended by sec. 53, act of Oct. 1, 1890; 26 Stat., 567.) An applicant for a special-tax stamp for a fractional part of a year must calculate from the first day of the month in which he commences business and must pay until the end of the fiscal year. A special tax payer, even though he makes sworn return within the calendar month of his liability, is liable to criminal prosecution if he fails to pay the tax within that month or to post the stamp in his place of business, although he is not liable to the additional tax imposed by section 3176, Revised Statutes, as amended.

[¶ 1133] Art. 53. **Returns.**—It shall be the duty of special tax payers to render their returns to the deputy collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, not later than the last day of the month, except in cases of sickness or absence, as provided for in section 3176 of the Revised Statutes as amended. (See sec. 3237, R. S., as amended by sec. 53, act of Oct. 1, 1890; 26 Stat., 567.) For failure to make a sworn return within the time prescribed by law, without a reasonable cause for delinquency, the Commissioner of Internal Revenue is required to add to the special tax 25 per cent of its amount. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue is required to add to the special tax 50 per cent of its amount. (See article 65.)

[¶ 1134] Art. 54. **Stamps for special taxes.**—All special taxes imposed by law shall be paid by stamps denoting the tax, and the Commissioner of Internal Revenue is required to procure appropriate stamps for the payment of such taxes; and the provisions of sections 3312 and 3446, Revised Statutes, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars shall, so far as

applicable, extend to and include stamps for special taxes; and the Commissioner of Internal Revenue shall have authority to make all needful regulations relative thereto. (See sec. 3238, R. S.)

A special tax stamp issued is not a license, but merely a receipt for the tax. It puts the United States under no obligation whatever to the holder beyond assuring him against prosecution under the special tax laws. The firm name is the only name that is necessary in a special tax stamp issued to a partnership. Collectors or their deputies are forbidden to issue receipts for moneys received for taxes which are payable by stamps.

[¶ 1135] Art. 55. **Special tax stamps "at large."**—Any special tax payer except those liable to tax under subdivisions (6) and (7) of section 1001, whose business is such as to require him to travel from place to place in different States of the United States, such as proprietors of traveling theaters, proprietors of shooting galleries traveling with circuses, etc., may procure a special tax stamp "at large" covering, with the payment of but one special tax, the activities of such special tax payer throughout the United States. Collectors of internal revenue are instructed to issue such special tax stamps "at large" upon receipt of application and remittance covering the amount of tax due.

[¶ 1136] Art. 56. **Special tax stamp to be posted in place of business.**—Every person engaged in any business, vocation, or employment who is thereby made liable to a special tax shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax; and any person who shall, through negligence, fail to so place and keep said stamps, shall be liable to a penalty equal to the special tax for which his business renders him liable, and the costs of prosecution; but in no case shall said penalty be less than \$10. And where the failure to comply with the foregoing provision of law shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed: Provided, That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof. (See sec. 3239, R. S.)

[¶ 1137] Art. 57. **List of special taxpayers.**—Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which each such special tax has been paid; and upon application of any prosecuting officer of any State, county, or municipality he shall furnish a certified copy thereof, as of a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged. (Sec. 3240, R. S., as amended by the act of June 21, 1906; 34 Stat., 387.)

Records in the collectors' offices relating to special tax payers are based on returns made by these persons under compulsion of law for the sole purpose of raising revenue for the United States. Collectors are not permitted to send out these records or copies thereof for use against the special tax payers in cases not arising under the laws of the United States. This restriction does not apply to copies of Record 10, which the collector is required by the act of June 21, 1906, to furnish to prosecuting officers upon payment of the prescribed fee.

[¶ 1138] Art. 58. **Death or removal after paying tax.**—When any person who has paid the special tax for any trade or business dies, his wife or child,

or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house, and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax: Provided, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner of Internal Revenue. (Sec. 3241, R. S.)

Under the law and rulings of this office an executor, receiver, or referee in bankruptcy may continue the business under the stamp issued to the deceased or bankrupt taxpayer at the place and for the period for which the tax was paid. An assignee may continue business under his assignor's special tax stamp without incurring special tax liability.

[¶ 1139] **Art. 59. Transfer of place of business.**—Whenever the special tax payer desires to remove his business to a place other than that specified in his original return and stated in his special tax stamp he shall, during the calendar month in which such transfer is made, register such fact by filing under oath an additional return on the prescribed form, properly modified, setting forth the time and place where he intends to engage in the business described; and if such tax payer is a firm or corporation, the names and residences of all the members or principal officers thereof shall again be recorded. He shall also forward the special tax stamp to the collector in order that proper notation of the transfer may be made thereon, after which it will be returned to the owner. Should the transfer be made to a location in another collection district, the stamp will be forwarded to the collector who issued it, who will make proper notation on his Record 10 and make notation on the stamp as to transfer. This collector will then forward the stamp to the collector of the district to which the taxpayer will transfer, who will make out a proper Record 10 card and sign the stamp under the signature of the transferring collector, and forward the stamp to the tax payer. Unless such transfer notice is filed within the time specified a new special tax liability will be incurred and a new special tax stamp will be required for the carrying on of the business.

[¶ 1140] **Art. 60. Change in membership of firm.**—When one or more members of a firm or partnership withdraw the business may be continued by the remaining partner or partners under the same special tax stamp, but where new partners are taken into a firm the new firm can not carry on business under the special tax stamp of the old firm. It must make return and pay its own special tax reckoned from the first day of the month in which it began business, even though the name of the new firm be the same as that of the old.

[¶ 1141] **Art. 61. Change from partnership to corporation.**—Where a partnership paying special tax incorporates a special tax stamp must be taken out in the name of the corporation.

[¶ 1142] **Art. 62. Who may carry on business without new stamp.**—A corporation may, upon application to the collector, change its name without creating new special tax liability, provided its charter permits such a change. A copy of the charter must be filed with the application and the stamp forwarded to the collector for proper notation. Additional special tax stamp is

not required by reason of an increase of capital stock of a corporation if State laws creating the corporation provide for such changes without the formation of a new corporation. Additional tax stamp is not required of an unincorporated club by reason of changes of membership where such changes do not result in a dissolution and formation of a new club.

[¶ 1143] Art. 63. **Changes to be registered.**—Whenever such a person as is permitted under article 62 to carry on the business of one who has paid the required special tax succeeds to such business he shall register with the collector under oath the name of the original taxpayer and the names of such successors and their residences together with all other data required. Any person succeeding to and carrying on the business for which special tax is required to be paid on removing to and carrying on such business at a place other than that for which the special tax was paid without registering such change on removal will be regarded as carrying on the business in violation of law, and will be liable to a fine of not less than \$10 nor more than \$500, in addition to his liability for the tax. (See sec. 3242, R. S.)

EXTENSION OF EXISTING STATUTES.

[¶ 1144] Sec. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return of such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[¶ 1145] Art. 64. **Aid to collection of tax.**—In collecting the special taxes the Commissioner has the benefit of all existing internal-revenue laws. In aid of the enforcement of the statute the Commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed.

PENALTIES.

[¶ 1146] Sec. 1317. That sections * * * 3176 of the Revised Statutes as amended are hereby amended to read as follows:

[¶ 1147] Sec. 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner shall be prima facie good and sufficient for all legal purposes.

If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper.

The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions

of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

[§ 1148] **Sec. 1005.** That any person who carries on any business or occupation for which a special tax is imposed by sections 1000, 1001, or 1002, without having paid the special tax therein provided, shall, besides being liable for the payment of such special tax, be subject to a penalty of not more than \$1,000 or to imprisonment for not more than one year, or both.

[§ 1149] **Sec. 1308. (a)** That any person required under titles * * * to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment or collection of any such tax, who fails to pay, * * * or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than \$1,000.

(b) Any person who willfully refuses to pay, * * * or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, * * * or truly account for and pay over any such tax shall in addition to other penalties provided by law be liable to a penalty of the amount of the tax evaded, or not paid, * * * or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected: Provided, however, That no penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, * * * or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(d) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[§ 1150] **Sec. 3184, R. S.** Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

[§ 1151] **Art. 65. Penalties.**—Any person who fails to file a return of tax due within the time prescribed by law or regulations made pursuant to law is liable to an additional amount equal to 25 per cent of the total tax due except when it is shown that the failure to file the return within the prescribed time was due to a reasonable cause and not to willful neglect. If a false or fraudulent return is filed the taxpayer is liable to an additional amount equal to 50 per cent of the total tax. A person who fails to pay or truly to account for any tax or to make any return prescribed by law is in addition to the increased tax as set forth above liable to a penalty of not more than \$1,000. If he willfully refuses to pay or account for any tax or make any return required by law, or willfully attempts in any manner to evade the tax he is guilty of a

misdeemeanor and in addition to the increased taxes provided for he is liable to a fine of \$10,000, or imprisonment for not more than one year, or both, together with the costs of prosecution. Where a false or fraudulent return is filed it is considered *prima facie* evidence of a willful attempt to evade tax and the penalties provided by law for such offense will be invoked. Under section 3184, Revised Statutes, a taxpayer who does not pay a special tax assessed within 10 days from the date of the mailing by the collector of a notice and demand for payment is liable to a 5 per cent penalty and interest at the rate of 1 per centum per month.

AUTHORITY FOR REGULATIONS.

[¶ 1152] **Sec. 1309.** That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

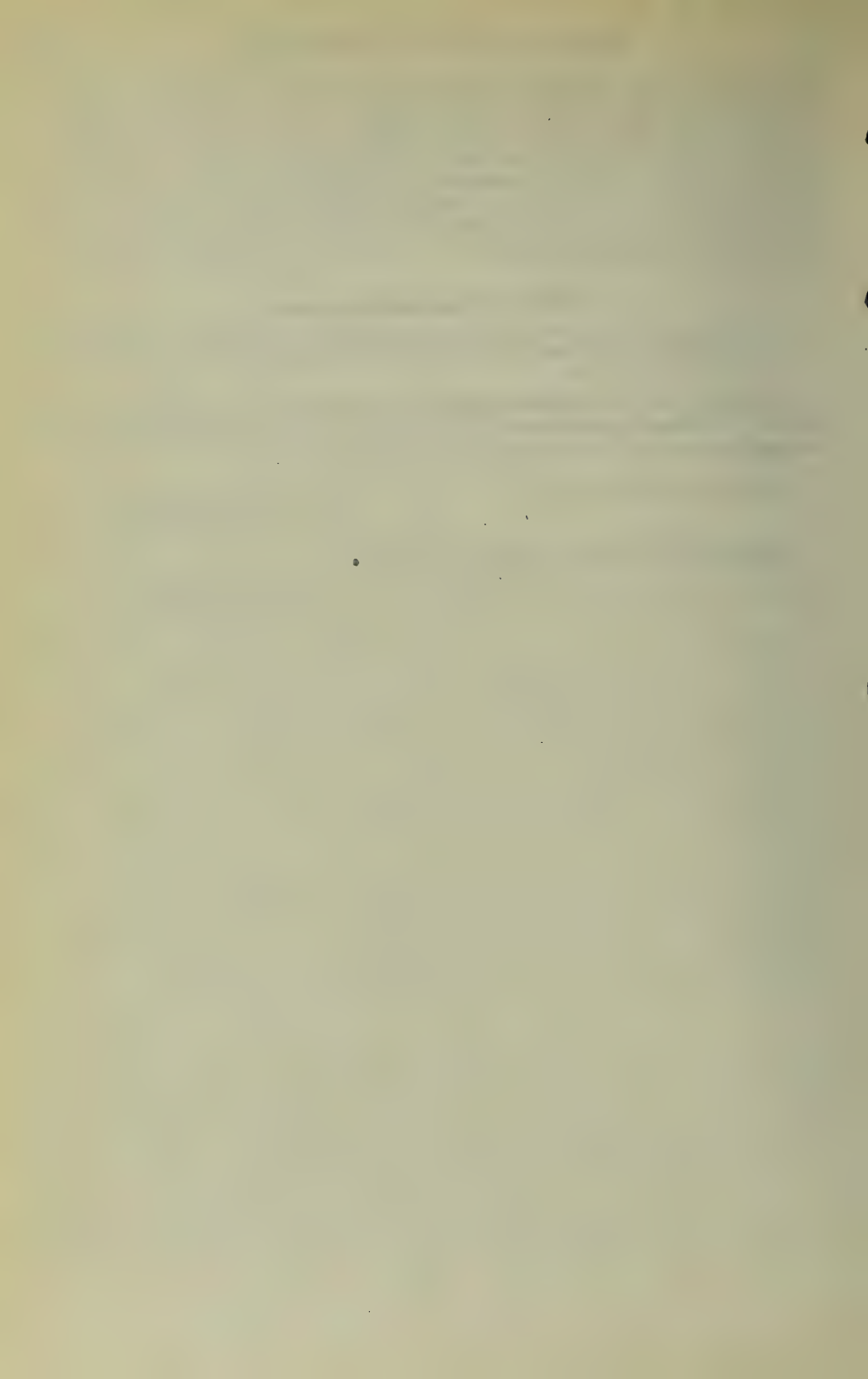
[¶ 1153] **Art. 66. Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

Approved January 20, 1921.

WM. M. WILLIAMS,
Commissioner of Internal Revenue.

Released for publication February 2, 1921.

D. F. HOUSTON,
Secretary of the Treasury.



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STAMP TAX

ON

DOCUMENTS

(EXCEPT ON ISSUE, SALES AND TRANSFERS
OF CERTIFICATES OF STOCK AND SALES
OF PRODUCTS FOR FUTURE DELIVERY)

IMPOSED BY TITLE XI OF THE
REVENUE ACT OF 1918

Law,
Regulations No. 55 (Revised), and
Treasury Decisions

Indexed

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LAW,
REGULATIONS No. 55 (REVISED), AND TREASURY DECISIONS
RELATING TO

STAMP TAXES ON DOCUMENTS

(Except on issue, sales and transfers of certificates of stock and sales of products for future delivery.)

DATE EFFECTIVE.

[¶ 1154] Title XI, Revenue Act of 1918, imposing stamp taxes is effective on and after April 1, 1919. See section 1100.

BONDS, DEBENTURES, AND CERTIFICATES OF INDEBTEDNESS.

(NOTE: For effect of failure to affix stamps see paragraph 1271.)

[¶ 1155] **Schedule A1. Bond of indebtedness:** On all bonds, debentures, or certificates of indebtedness issued by any person, and all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities, on each \$100 of face value or fraction thereof, 5 cents: Provided, That every renewal of the foregoing shall be taxed as a new issue: Provided further, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

[¶ 1156] **Art. 1. Delivery essential to issue.**—Delivery is essential to constitute an issue of bonds.

[¶ 1157] **Art. 2. "Foregoing" defined.**—The word "foregoing" in Schedule A1, is held to apply to the class of instruments listed therein, regardless of whether issued prior to, or After April 1, 1919, and not merely to instruments issued on or after April 1, 1919.

[¶ 1158] **Art. 3. Bonds accompanying real estate mortgages.**—Bonds accompanying real estate mortgages are taxable as bonds of indebtedness upon the amount secured and not as bonds of indemnity under Schedule A2.

[¶ 1159] **Art. 4. Bond renewed by agreement extending mortgage.**—An agreement extending a mortgage upon maturity, where a bond is secured by the mortgage and such agreement operates to renew the bond, subjects the latter to stamp tax as a renewal.

[¶ 1160] **Art. 5. Agreement extending maturity of mortgage bond; additional bond.**—An agreement between the holder of a bond and the present owner of a parcel of real estate, extending maturity of a mortgage bond executed by a former owner, operates as a renewal and such renewal is subject to tax. If in addition a new bond is given for the same indebtedness, it also is subject to tax.

[¶ 1161] **Art. 6. Stamps may be affixed to bonds or indenture; bonds to bear legend.**—The necessary revenue stamps may be affixed either to the bonds or to the indenture under which the bonds are issued. If the stamps are affixed to the indenture the bonds must bear a legend showing that the proper revenue stamps have been affixed to the indenture and duly canceled. If the indenture provides for the issue of bonds over a period of years, the necessary stamps may be affixed at the time of each issue.

[¶ 1162] **Art. 7. Interim certificates and temporary bonds.**—Interim certificates or temporary bonds issued in lieu of definitive bonds are taxable, but no additional tax is required upon the issue of the permanent or definitive bonds, which, however, should bear notation of the fact that stamps in the proper amount were duly attached to the interim certificates.

[¶ 1163] Art. 8. **Instruments issued by corporations in numbers, under a trust indenture, are bonds.**—Instruments containing the essential features of a promissory note, but issued by corporations in series, secured by a trust indenture, either in registered form or with coupons attached, embodying provisions for acceleration of maturity in the event of any default by the obligor, for optional registration in the case of bearer bonds, for authentication by the trustee, and in some instances for redemption before maturity, or similar provisions, are bonds within the meaning of the statute, whether called bonds, debentures, or notes.

[¶ 1164] Art. 9. **Scrip-dividend certificates or warrants.**—Scrip-dividend certificates or warrants are taxable as certificates of indebtedness.

[¶ 1165] Art. 10. **Instrument styled a bond and under seal a bond, unless.**—An instrument which is styled a “bond” and which is under seal should be held subject to tax as a bond unless it is shown affirmatively that it is not a bond.

[¶ 1166] Art. 11. **Business property investment bond.**—A business property investment bond wherein it is certified that the holder thereof is the owner of an interest in certain specified real property, legal title to which has previously been conveyed to a trustee, and whereby the corporation issuing the same agrees to manage the property and distribute the proceeds in a certain manner, is not subject to tax as a bond, debenture, or certificate of indebtedness, but is subject to tax as a certificate of interest in property issued by a corporation.

[¶ 1167] Art. 12. **Instrument assigning interest in bond.**—An instrument which merely represents an assignment of interest in a bond accompanying a mortgage is not taxable.

[¶ 1168] Art. 13. **Certificates of deposit; Morris-plan banks.**—Any instrument which is actually a certificate of deposit issued by a bank is exempt from stamp tax, regardless of whether it is negotiable or nonnegotiable or whether it is payable on demand or at some specified time. Certificates of deposit issued by banks or organizations operating upon the Morris plan are not subject to stamp tax.

[¶ 1169] Art. 14. **Conditional bills of sale.**—Conditional bills of sale used in sale of merchandise on the installment plan are not certificates of indebtedness within the meaning of Schedule A 1 and are not subject to stamp tax, unless in the form of promissory notes.

[¶ 1170] (Added by T. D. 2919.) **Certificates of Indebtedness.**—The term “certificates of indebtedness” includes only instruments having the general character of investment securities, as distinguished from instruments evidencing debts arising in ordinary transactions between individuals.

[¶ 1171] Art. 15. **Certificates of indebtedness issued by receivers.**—A certificate of indebtedness issued under order of a Federal court by a receiver is subject to tax.

[¶ 1172] Art. 16. **Bonds of indebtedness executed and delivered as security.**—The tax applies to bonds of indebtedness executed by the obligor and delivered to a bank or trust company as security for the payment of an obligation.

[¶ 1173] Art. 17. **Bonds executed in Canada and delivered in the United States.**—Bonds executed in Canada by a Canadian corporation, certified to by a trustee in the United States, given for part of the purchase price of timber located in Canada, and delivered in the United States are subject to tax.

[¶ 1174] Art. 18. **Bonds issued in satisfaction of insurance policies.**—Bonds issued by life insurance companies in satisfaction of insurance policies are subject to tax.

[¶ 1175] Art. 19. **Bonds issued by school districts.**—Bonds issued by school districts for school purposes are exempt from tax.

BONDS, INDEMNITY AND SURETY.

(NOTE: For effect of failure to affix stamps see paragraph 1271.)

[¶ 1176] **Schedule A2. Bonds, indemnity and surety:** On all bonds executed for indemnifying any person who shall have become bound or engaged as surety, and on all bonds executed for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and on all policies of guaranty and fidelity insurance, including policies guaranteeing titles to real estate and mortgage guarantee policies, and on all other bonds of any description, made, issued, or executed, not otherwise provided for in this schedule, except such as may be required in legal proceedings, 50 cents: Provided, That where a premium is charged for the issuance, execution, renewal, or continuance of such bond the tax shall be 1 cent on each dollar or fractional part thereof of the premium charged: Provided further, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

[¶ 1177] Art. 20. **Guaranty under seal.**—A guaranty under seal of the performance of the conditions of a contract by persons not parties thereto is taxable as a bond.

[¶ 1178] Art. 21. **Bonds of brewers, etc.; notation to be made on duplicates.**—Bonds of brewers, manufacturers of oleomargarine, tobacco and cigars, also distiller's annual and warehousing bonds, and transportation bonds, are required to be stamped. Where these bonds are required by law to be made in duplicate or triplicate, only the original is required to be stamped, and on the duplicates and triplicates a memorandum must be made stating that the tax has been paid by stamp attached to the original bond. Copies of distiller's bonds forwarded to this office for office use need not be stamped.

[¶ 1179] Art. 22. **Guarantee title insurance policies.**—Guarantee title insurance policies or contracts of guarantee title insurance companies, insuring against loss by reason of defect of title, are taxable as policies of guaranty insurance.

[¶ 1180] Art. 23. **Indemnity and fidelity bonds and premiums thereon.**—All bonds executed for indemnifying any person who shall have become bound or engaged as surety, and all bonds executed for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for any money received by virtue thereof, and all policies of guaranty and fidelity insurance, including policies guaranteeing titles to real estate and mortgage guaranty policies, and all other bonds of any description not otherwise provided for in Schedule A, Title XI, revenue act of 1918, except such as may be required in legal proceedings, executed on or after April 1, 1919, and also the premiums charged upon such bonds or policies heretofore issued, which are paid for the purpose of renewing or continuing such bonds or policies in force beyond the date of March 31, 1919, are subject to tax.

[¶ 1181] Art. 24. **Rate and amount of premium charged to be shown on face of bond or policy.**—Where a premium is charged upon any bond or policy designated in Schedule A2, executed or issued on or after April 1, 1919, a statement must be made on the face of the bond or policy showing the rate and amount of premium charged, and bonding companies or other persons executing such bonds or policies must affix thereto the necessary amount of stamps, based upon the premium charged, canceling the same.

[¶ 1182] Art. 25. What premiums taxable; notation to be made on renewal or continuance certificates and stamps to be affixed thereto.—Where a premium is paid after April 1, 1919, for the issuance or execution after said date, or for the renewing or the continuing in force after said date, regardless of the date of original issuance or execution, of any bond or policy designated in Schedule A2, the tax due upon such premium payment must be paid by internal-revenue stamps. The renewal or continuance certificate or other paper showing the renewal or continuance of such bond or policy or the receipt or other paper showing the payment of any premium or charge for the renewal or continuance of such bond or policy must contain on the face thereof a statement showing the rate and amount of the premium charged and collected, and the bonding company or other person issuing or executing such certificate, receipt, or paper must affix thereto the necessary amount of stamps based upon the premium charged, canceling the same.

[¶ 1183] Art. 26. Agreements to build; bonds for faithful performance of contract.—Mere agreements to build houses are not taxable, but if bonds are included for the faithful performance of the work or contracts, they are subject to tax as indemnity or surety bonds.

[¶ 1184] Art. 27. Bonds required in legal proceedings.—Bonds "required in legal proceedings" are exempt from stamp tax. These include attachment bonds, injunction bonds, bonds to stay proceedings, bonds on appeal or writ of error, bonds for costs, recognizances, supersedeas bonds; also official bonds of trustees, receivers or referees in bankruptcy and other court receivers, assignees, executors, administrators, and guardians.

[¶ 1185] Art. 28. Bonds given to United States, State, township, county or village.—(a) Bonds given by officials of a State, township, county, or village, for the faithful performance of duties, and bonds given to the same political subdivisions covering contracts for governmental purposes or for the protection of the State, township, county, village, or municipality, are not subject to the stamp tax. This ruling does not apply to bonds otherwise taxable given to the Federal Government for any purpose. This exemption is construed as applying to bonds of notaries public.

[¶ 1186] (Added by T. D. 2913.) (b) Bonds executed for the due execution or performance of any contract, obligation or requirement, or the duties of any office or position, and to account for money received by virtue thereof, furnished in compliance with the laws of the United States or regulations made pursuant thereto are subject to the stamp tax of 50 cents, even though United States Liberty bonds or other bonds of the United States are deposited in connection therewith, with the officials having authority to approve such bonds, in lieu of surety or sureties, under the provisions of Section 1320 of the Revenue Act of 1918. (T. D. 2913.)

(c) Indemnity bonds filed with the Treasury Department to secure the United States against loss on account of (1) the issue of duplicates in lieu of, or in payment of, lost, stolen, or destroyed United States bonds or notes; (2) the issue of definitive bonds of the First Liberty Loan against full paid interim certificates proved to have been lost, stolen or destroyed; or (3) issue of duplicate disbursing officer's checks, other than in payment of "any pension, allowance, allotment, relief, or insurance," granted to soldiers, sailors, marines, or their dependents, by the United States, or interest checks, for checks proved to have been lost, destroyed or never received are subject to stamp tax.

(d) Indemnity bonds given by soldiers, sailors, marines, or other persons entitled to insurance under the war risk insurance act, for the protection of the United States against loss by reason of the issuance of duplicate checks for such insurance, are not subject to stamp tax. (Added by T. D. 2900.)

[¶ 1187] Art. 29. **Bonds of depositaries designated by court.**—Bonds of depositaries designated by the United States District Court for the keeping of bankruptcy estates' moneys are likewise not taxable.

[¶ 1188] Art. 30. **Bonds of warehousemen and jitney-buss owners.**—Bonds required by a State statute from warehousemen and owners of jitney busses running in favor of the State are not subject to the tax.

[¶ 1189] Art. 31. **Agreements to hold harmless, not under seal and without surety.**—Applications addressed to surety and fidelity companies wherein the applicant agrees to indemnify the surety company in case of loss under the bonds applied for, agreements executed by shippers undertaking to hold railroads harmless on account of any loss occurring by reason of the payment of claims against such railroads without the presentation of original bills of lading, etc., agreements, executed by depositors of banks and institutions of a similar characters, agreeing to hold such institutions harmless on account of the payment to depositors of sums covered by pass books or checks and drafts, etc., which have been lost, and other instruments of similar character and scope, not under seal and without surety, which impose upon those executing them no liability other than that which would be automatically imposed upon them by operation of law, are not subject to stamp tax. It must, however, be clearly understood that any form of agreement of indemnification to which sureties are parties is taxable as an indemnity bond.

[¶ 1190] Art. 32. **Amount of the tax.**—If no premium is charged, the tax is 50 cents; if a premium is charged, the tax is 1 cent on each dollar or fractional part thereof of such premium.

CAPITAL STOCK, ISSUE.

Schedule A 3. (See Regulations No. 40, Revised 1919, covering this subject.) (Par. 1351.)

SALES AND TRANSFERS OF CERTIFICATES OF STOCK.

Schedule A 4. (See Regulations No. 40, Revised 1919, covering this subject.) (Par. 1351.)

SALES OF PRODUCTS FOR FUTURE DELIVERY.

Schedule A 5. (See Regulations No. 40, Revised 1919, covering this subject.) (Par. 1351.)

DRAFTS, CHECKS, AND PROMISSORY NOTES.

(NOTE: For effect of failure to affix stamps see paragraph 1271.)

[¶ 1191] **Schedule A6. Drafts or checks** (payable otherwise than at sight or on demand) upon their acceptance or delivery within the United States whichever is prior, promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding \$100, 2 cents; and for each additional \$100, or fractional part thereof, 2 cents.

This subdivision shall not apply to a promissory note secured by the pledge of bonds or obligations of the United States issued after April 24, 1917, or secured by the pledge of a promissory note which itself is secured by the pledge of such bonds or obligations: Provided, That in either case the par value of such bonds or obligations shall be not less than the amount of such note.

[¶ 1192] Art. 33. **Drafts and checks payable otherwise than at sight or on demand.**—Drafts and checks payable otherwise than at sight or on demand become subject to stamp tax if delivered or accepted within the United States.

[¶ 1193] Art. 34. **Time draft or check taxable on acceptance or delivery.**—A time draft or check becomes subject to tax concurrently with its acceptance or delivery, whichever is prior, within the territorial jurisdiction of the United States, which includes the States, District of Columbia, Hawaii, and Alaska. Time drafts drawn on and delivered outside of the United States are subject to tax upon their acceptance within the United States.

[¶ 1194] Art. 35. **Drawee, payee, or indorsee to see that tax is paid.**—The drawee, payee, or indorsee should see that the tax is paid before or at the time of acceptance or delivery. The question of who shall pay for the stamp is a matter for adjustment between the parties.

[¶ 1195] Art. 36. **Draft drawn abroad on foreign drawee with foreign payee.**—If a draft drawn abroad on a foreign drawee with a foreign payee passes through a bank here in the course of collection, no tax is payable unless it should be delivered by an agent of the drawer to an agent of the payee within the United States.

[¶ 1196] Art. 37. **Liability to tax determined by form or face of check or draft.**—The liability of drafts or checks to stamp tax as well as the amount of such tax is determined by their form and face and can not be affected by proof of facts of instructions outside of the drafts or checks. A draft expressed to be payable at sight on "arrival of car," or embodying a memorandum to hold until arrival of car, is taxable. A sight draft accompanied by instructions outside the instrument deferring time of payment is not taxable.

[¶ 1197] Art. 38. **Draft accepted for payment at future date.**—A draft stating no time for payment which is accepted for payment at a certain future date is taxable upon such acceptance as a time draft.

[¶ 1198] Art. 39. **Trade acceptances.**—So-called "trade acceptances" are taxable in the same manner as ordinary time drafts.

[¶ 1199] Art. 40. **Drafts against actual shipment.**—Drafts directly against an actual shipment are taxable in the same manner as other domestic time drafts.

[¶ 1200] Art. 41. **Time draft covering exports to foreign country.**—A time draft directly covering exports to a foreign country and which constitutes an inherent, necessary, and bona fide part of the actual process of exportation is exempt from stamp tax. This exemption does not depend on whether or not the time which the draft has to run will expire before or after the ocean shipment. Time drafts drawn against the proceeds of the foregoing draft are subject to stamp tax.

[¶ 1201] Art. 42. **Time draft to secure purchase money.**—A time draft drawn on a domestic bank for the purpose of securing money to purchase goods to be exported is subject to tax regardless of the fact that a contract for the sale of the goods existed at the time the draft is drawn.

[¶ 1202] Art. 43 (as amended by T. D. 3100). **Time drafts on domestic banks covering exports.**—A time draft directly covering a sale for export to a foreign buyer and drawn on a domestic bank as the authorized acceptor of the foreign buyer is exempt from stamp tax. A time draft drawn by or on an exporter or on his bank in payment for export shipments made by the manufacturer on the exporter's order is subject to stamp tax. (T. D. 3100, dated Dec. 11, 1920.)

[¶ 1203] Art. 44. **Time drafts payable in foreign countries.**—Time drafts not covering exports drawn and delivered or accepted in the United States and payable in foreign countries are taxable.

[¶ 1204] Art. 45. **Time drafts covering shipments to Canal Zone.**—Stamp tax attaches to time drafts covering articles shipped from the United States, Hawaii, and Alaska to Canal Zone, if the drafts are delivered within the United States, Hawaii, or Alaska.

[¶ 1205] Art. 46. **Time drafts covering shipments to Virgin Islands, Philippines, and Porto Rico.**—Stamp tax does not attach to time drafts covering shipments to the Virgin Islands, Philippines, and Porto Rico, because of express legislation exempting shipments to these dependencies.

[¶ 1206] Art. 47. **Time drafts covering shipments from Virgin Islands, Philippines, and Porto Rico.**—Time drafts drawn against shipments from the Virgin Islands, the Philippines, and Porto Rico, into the United States, are subject to stamp tax if delivery or acceptance of said drafts first takes place within the United States, Alaska, or Hawaii.

[¶ 1207] Art. 48. **"Promissory note" defined.**—(a) A promissory note is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determined future time, a certain sum in money to such other person or to order or to bearer, free from restrictions as to registration or transfer and usually without coupons.

(b) The stamp tax on a promissory note is measured by the amount of the principal obligation without regard to the form in which the obligation to pay interest is expressed.

[¶ 1208] Art. 49. **Notes payable on demand promissory notes.**—The term "promissory notes," as used in this Schedule, includes those payable on demand.

[¶ 1209] Art. 50. **Promissory notes given as security.**—Promissory notes given for security only are subject to tax.

[¶ 1210] Art. 51. **Renewal of promissory note taxable.**—Each renewal of a promissory note is taxable. Any writing or instrument however designated which operates as a renewal of a promissory note is taxable.

[¶ 1211] Art. 52. **Extension or renewal of promissory note by extension of mortgage by which secured.**—Where a contract or agreement extending either a chattel or real estate mortgage operates to extend or renew a promissory note secured by the mortgage, the renewal of such note is taxable.

[¶ 1212] Art. 53 (substituted by T. D. 2954). **Promissory notes given to Federal land banks and joint stock land banks.**—(a) Promissory notes given to Federal land banks and joint stock land banks, when secured by first mortgages, are exempt from stamp tax.

(b) **Promissory notes issued by Federal land banks.**—Promissory notes issued by Federal land banks are exempt from stamp tax.

(c) **Promissory notes issued by joint stock banks.**—Promissory notes issued by joint stock land banks are subject to stamp tax.

[¶ 1213] Art. 54. **Promissory notes issued by foreign governments.**—Promissory notes issued directly by foreign governments and placed in this country for sale are exempt from stamp tax.

[¶ 1214] Art. 55. **Promissory notes secured by obligations of the United States.**—Promissory notes secured by United States bonds and obligations issued after April 24, 1917, of a par value of not less than the amount of such notes, are exempt from tax.

NOTE: Promissory notes issued by the Food Administration Grain Corporation are held subject to tax according to an unofficial ruling by the Commissioner.

[¶ 1215] Art. 56. **Promissory notes secured by certificates of indebtedness issued by Director General of Railroads or by bonds of the War Finance Corporation.**—Promissory notes secured by certificates of indebtedness issued by the Director General of Railroads are exempt from stamp tax. Promissory notes secured by bonds of the War Finance Corporation are subject to tax.

[¶ 1216] Art. 57. **Suspension of payment or forbearance.**—Mere suspension of payment or forbearance is not taxable.

[¶ 1217] Art. 58 (as amended by T. D. 2941). **Coupons and interest notes.**—(a) Coupons attached to bonds, debentures or certificates of indebted-

ness issued by any individual, partnership, or corporation, or to instruments, however termed, issued by a corporation and known generally as corporate securities (all of which are subject to tax as bonds of indebtedness under Schedule A1) are not subject to tax, if they impose no obligation not imposed by the principal instrument.

(b) Interest coupons attached to promissory notes taxable under Schedule A6, as distinguished from the securities enumerated in paragraph (a), if they are themselves promissory notes, separable from the principal obligation and negotiable independently of it, are subject to tax, even though they impose no obligation not imposed by the principal instrument.

[¶ 1218] Art. 59. **Payment of interest on demand note not a renewal.**—The mere payment of interest on a demand note without any agreement in writing extending the note, is not a renewal within the meaning of this act.

[¶ 1219] Art. 60. **Payment of interest in advance after maturity of promissory note a renewal.**—Where after maturity of a promissory note, interest is paid in advance, and as evidence of such payment an indorsement in substance as follows: "19—. Received six months' interest to—, 19—\$——" is made on the note, the indorsement operates as a renewal, and the renewal is subject to tax.

[¶ 1220] Art. 61. **Policy loan and premium extension agreements.**—Policy loan and premium extension agreements which contain an unqualified promise to pay a specified sum of money at a certain date are subject to stamp tax as promissory notes. Where the sole remedy of payee in case of nonpayment of the premiums or loans is to reduce or cancel the rights of the insured, tax does not accrue.

[¶ 1221] Art. 62. **Certificates of deposit.**—A certificate of deposit is not subject to tax as a promissory note.

[¶ 1222] Art. 63. **Post-dated checks.**—Post-dated checks are not subject to tax unless expressly payable after their date.

[¶ 1223] Art. 64. **Promissory note executed and mailed in Canada.**—A promissory note executed and mailed in Canada to a payee within the United States is not subject to tax.

[¶ 1224] Art. 65. **Promissory note executed and mailed to payee in Canada.**—A promissory note executed and mailed in the United States to a payee in Canada is subject to tax.

DEEDS OF CONVEYANCE.

(NOTE: For effect of failure to affix stamps see paragraph 1271.)

[¶ 1225] **Schedule A7. Conveyances:** Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof, 50 cents. This subdivision shall not apply to any instrument or writing given to secure a debt.

[¶ 1226] Art. 66. **Who shall affix stamps.**—The law requires that the person who makes, signs, or issues any instrument taxable thereunder shall affix and cancel the revenue stamps. It also prohibits any person from accepting such instruments unless they are properly stamped. The grantee in a deed is liable for the tax as well as the grantor.

[¶ 1227] Art. 67. **Actual value at time of conveyance the measure of the tax.**—Where the consideration for a conveyance of lands, tenements, or other real property, is left open, to be fixed by future contingencies, the actual value

at the time of conveyance is the measure of the tax upon the deed, instrument, or writing whereby the conveyance is made.

[¶ 1228] Art. 68. **Tax, how computed.**—In calculating the amount of stamps which must be affixed to a deed of conveyance, the tax is computed upon the full consideration for the transfer less all encumbrances which rest on the property before the sale and which are not removed by the sale. Encumbrances placed on the property in connection with and as a result of the sale or transfer, as well as notes for deferred payments, can not be deducted in determining the amount upon which tax is calculated.

[¶ 1229] Art. 69. **Tax on deed executed by sheriff, referee, or commissioner, how computed.**—The stamp tax on a deed of real property executed by a sheriff, referee, or commissioner to mortgagee, who bids in the property at foreclosure sale to satisfy a mortgage lien, should be computed upon the amount bid for the property plus the cost, if paid by the purchaser.

[¶ 1230] Art. 70. **"Sold" defined.**—The term "sold" imports the transfer of the absolute or general title for a valuable consideration or price.

[¶ 1231] Art. 71. **Deeds executed and delivered on or after April 1, 1919.**—Deeds executed and delivered on or after April 1, 1919, conveying property in pursuance of a contract made prior to that time are taxable. The same rule applies to similar deeds delivered prior to April 1, 1919, and taxable under the act of October 3, 1917.

[¶ 1232] Art. 72. **Deed dated prior to April 1, 1919, but acknowledged and delivered after that date.**—A deed dated prior to April 1, 1919, but delivered subsequent to that date, is taxable. If delivered between December 1, 1917, and April 1, 1919, it is taxable under the act of October 3, 1917.

[¶ 1233] Art. 73. **Deeds in escrow.**—Deeds in escrow become subject to stamp tax upon delivery to the grantee. If delivered between December 1, 1917, and April 1, 1919, they are taxable under the act of October 3, 1917; if delivered on or after April 1, 1919, they are taxable under the act of February 24, 1919.

[¶ 1234] Art. 74. **Deeds conveying property sold under foreclosure or execution; tax, how paid.**—Deeds executed by masters in chancery, sheriffs, clerks of courts, etc., to cover transfers of property sold under a foreclosure or execution are subject to tax. The grantee or vendee may be required to pay the tax or the cost of revenue stamps may be included in the expenses of foreclosure sale.

[¶ 1235] Art. 75. **Deeds on exchange of properties.**—In the case of an exchange of two properties, the deeds transferring title to each are subject to tax, which should in each case be computed on the basis of the actual value of the interest or property conveyed, the amount of any preexisting lien or encumbrance which is not removed by the sale being deductible.

[¶ 1236] Art. 76. **What constitutes real property determinable by law of State where located.**—(a) What constitutes "lands, tenements, or other realty" is determinable by the law of the State in which the property is situated. Standing timber is ordinarily held to be real estate and, where so held, the deed transferring it is subject to the tax.

(b) In States where common law dower still exists an instrument purporting to convey the inchoate right of dower of a wife or the consummate right of dower of a widow, prior to assignment of dower, is not subject to stamp tax; but an instrument conveying the estate acquired by a widow upon assignment of dower is subject to tax. Where by statute dower has been abolished and a different interest in the husband's real property conferred upon the wife in lieu thereof, the taxability of an instrument purporting to convey such an interest prior to its assignment will be determined by the nature of the wife's

interest, and the statutes and decisions of the particular State in which the real estate is located must be consulted.

[¶ 1237] Art. 77. **Deeds conveying mines.**—Deeds conveying mines are taxable.

[¶ 1238] Art. 78. **Conveyance of property subject to equity of redemption.**—A conveyance of property subject to an equity of redemption is taxable when made, not when the time for the equity of redemption has expired.

[¶ 1239] Art. 79. **Conveyance of land in consideration of maintenance.**—A conveyance of land in consideration of life maintenance is taxable, the tax to be measured by the value of the property or interest conveyed.

[¶ 1240] Art. 80. **Deeds of building and loan associations.**—Deeds of building and loan associations conveying realty are taxable.

[¶ 1241] Art. 81. **Stock in corporation a valuable consideration.**—Stock in a corporation is a valuable consideration for the transfer of real property.

[¶ 1242] Art. 82. **Quit-claim deeds.**—A quit-claim deed given for no consideration, or merely the nominal consideration of \$1, for the purpose of correcting a flaw in title is not subject to tax.

[¶ 1243] Art. 83. **Options and contracts for real estate.**—No tax is imposed upon an option for the purchase of real property or upon a contract for the sale of real estate.

[¶ 1244] Art. 84. **Deeds of release and deeds of trust.**—Deeds of release and deeds of trust are exempt from tax under the provisions of this law.

[¶ 1245] Art. 85. **Deeds by State, county, or municipal officers.**—Deeds executed by State, county, or municipal officers conveying realty sold for non-payment of taxes are not subject to stamp tax.

[¶ 1246] Art. 86. **Deeds to a State.**—Deeds conveying to a State real estate purchased by it are not subject to tax.

[¶ 1247] Art. 87. **Deeds to burial sites.**—Deeds to burial sites which do not convey title to land, but only a right to sepulture, to erect monuments, etc., are not subject to stamp tax.

[¶ 1248] Art. 88. **Deed to cover gift.**—A deed issued to cover a pure and bona fide gift of property from husband to wife, or from parent to child, or from an individual to a municipality or other political subdivision, or to the United States, wherein the consideration named is “natural love and affection and \$1,” “desire to promote public welfare and \$1,” or “\$1 and other valuable considerations” is not taxable.

[¶ 1249] Art. 89. **Deed to trustee for benefit of creditor.**—A deed executed by a debtor covering an assignment of property to a trustee to be held for the benefit of a creditor is not subject to tax. When, however, the trustee sells or conveys such property either to the creditor or any other person, the deed executed by him is taxable.

[¶ 1250] Art. 90. **Deed to building and loan association.**—A deed transferring title to property to a building and loan association for the purpose of securing a loan on the property so conveyed, which property is immediately reconveyed to its owner, is not subject to tax, the deed of reconveyance being likewise exempt.

[¶ 1251] Art. 91. **Deed by husband and wife to “straw man.”**—A deed given by a husband and wife to a “straw man” who immediately executes a deed reconveying the property to the wife is not subject to tax if given for no valuable consideration, or merely the nominal consideration of \$1, and, likewise, the deed of reconveyance is exempt.

[¶ 1252] Art. 92. **Deeds from agent to principal.**—Deeds from an agent to his principal conveying real estate purchased for and with funds of the principal are not taxable.

[¶ 1253] Art. 93. **Reconveyances of partnership property by receivers.**—Conveyances of property of a copartnership, in the hands of receivers, back to the owners after administration of the estate are not taxable.

[¶ 1254] Art. 94. **Partition deeds.**—Partition deeds are not subject to tax unless a consideration passes between the parties by reason of one or more of them taking under the division a share of real estate of greater value than his undivided interest, in which event stamp tax attaches to the deeds conveying such greater shares, calculated upon the value of such consideration.

[¶ 1255] Art. 95. **Conveyances without consideration.**—Conveyances of realty, not in connection with a sale, to trustees or other persons without consideration are not taxable.

[¶ 1256] Art. 96. **Conveyances of real estate in foreign country.**—A deed conveying real estate in a foreign country is not subject to tax.

[¶ 1257] Art. 97. **Deeds confirming title.**—Deeds that are simply confirmatory and do not vest title not already vested are exempt from tax.

[¶ 1258] Art. 98. **Contracts for sale of real property.**—Contracts for the sale of real property are not taxable unless they vest title.

[¶ 1259] Art. 99. **Abstracts of title.**—Abstracts of title are not taxable.

[¶ 1260] Art. 100. **Leases of real property.**—Leases of real property are not subject to the tax.

[¶ 1261] Art. 101. **Conveyance by coowners in consideration of capital stock.**—A conveyance of real estate by coowners to a corporation organized for convenience in handling the property, made in consideration of the issue to them of the corporation's capital stock, is subject to tax.

[¶ 1262] Art. 102. **Deeds by executor.**—Deeds by an executor to devisees, conveying specific parcels of real estate, devised to them in common, are not subject to tax unless a consideration passes between the devisees by reason of some of them taking a greater share in the real estate than that to which entitled under the will, in which event tax attaches to the deeds conveying such greater shares, and is calculated upon the amount of value of such consideration.

[¶ 1263] Art. 103. **Conveyance by corporation to owner of all the capital stock.**—A conveyance of real estate by a corporation without valuable consideration to an owner of all its capital stock in consequence of its dissolution is not subject to tax.

[¶ 1264] Art. 104. **Conveyance by mortgagor to mortgagee.**—A conveyance by defaulting mortgagor to mortgagee in consideration of the cancellation of mortgage debt is subject to tax calculated on the amount of the mortgage debt plus unpaid accrued interest.

[¶ 1265] Art. 105. **Conveyances to trustee, or from trustee to cestui qui trust, without consideration.**—Conveyances to a trustee without valuable consideration or from a trustee to a cestui qui trust without valuable consideration are not subject to tax.

[¶ 1266] Art. 106. **Conveyance to United States.**—A conveyance of real estate sold to the United States Government is subject to tax.

[¶ 1267] Art. 107. **Deed from one corporation to another owning capital stock of former in consideration of payment of debts.**—A deed from a corporation, the entire capital stock of which is owned by another corporation, conveying real estate to the latter in consideration of the payment by the grantee of all obligations of the grantor is subject to tax.

[¶ 1268] Art. 108. **Judgment or decree of State court transferring title to real estate.**—Judgment or decree of a State court operating to transfer title to real estate is not taxable as a conveyance.

[¶ 1269] Art. 109. **Taxes and assessments, when deductible.**—Taxes and assessments which have become a lien on real estate by operation of statute and which are not paid at time of sale are deductible from the consideration in computing the stamp tax.

[¶ 1270] Art. 110. **Conveyance by corporation to an officer through third party.**—Where an officer of a corporation purchases real estate from the corporation, conveyance being first made to a third party and as part of the same transaction, the property is conveyed by the third party to the officer, the conveyance to the third party is subject to tax, while the conveyance from the third party is not subject to tax.

EFFECT OF FAILURE TO AFFIX STAMPS.

[¶ 1271] **Counsel's explanation.**—The present law contains no provisions that an unstamped instrument shall be void or shall not be admitted as evidence in the courts, or shall not be placed on record. But Sections 13, 14, and 15 of the Act of June 13, 1898, as amended by the Act of March 2, 1901, were held by the Treasury Department to be still in force, and to apply to deeds unstamped under Title VIII of the Act of Oct. 3, 1917, to the extent that they forbid the record and admission in evidence of unstamped deeds and require their presentation to the collector of the district for validation. This ruling is contained in a letter from the Treasury Department, dated May 27, 1918, to an inquiring taxpayer. Section 13 makes provision for the stamping of documents issued without stamps. Section 14 that unstamped instruments are not admissible in evidence; and Section 15 that unstamped instruments shall not be recorded. The taxpayer's inquiry to the Treasury Department was whether the war tax as to stamps on deeds affected the validity of the deeds, whether good title passed under a deed that should have been stamped, but was not, and whether a purchaser could be compelled to pay a sum equal to the stamps that should have been affixed to deeds through which he takes title. After stating that the several sections of the prior act above referred to are still in full force and operation the letter from the Deputy Commissioner of Internal Revenue concludes: "The seller of real estate is primarily liable for the payment of the stamp tax on a deed of conveyance. The provisions of the above sections for refusing record and admission in evidence of unstamped deeds and their validation by collectors, are effective, and to obviate any question that might arise as to validity of unstamped deeds, the proper course is to follow the procedure fixed by these sections. Where a purchaser has accepted an unstamped deed he may be compelled to pay the required tax before having the deed recorded, or prosecuted under Section 1102 of the law." Since the above ruling was made in connection with the stamp tax provisions of the 1917 Act and prior to the enactment of the present Act which repeals the stamp tax provisions of the 1917 Act, its applicability to matters arising under the present Act is subject to question.

The above ruling has been rendered of little or no effect by the decision in the case of *Cole et al., vs. Ralph*, 252 U. S. 286. In that case deeds were received in evidence on the trial without having the stamps required by the Revenue Act of Oct. 22, 1914. It was held by the Supreme Court that this neither invalidated the deeds, nor made them inadmissible as evidence. The court said that by contrasting the provisions of sections 6, 11, 12 and 13 of the Act of 1914 with Sections 7, 13, 14 and 15 of the Act of 1898, C. 448, 30 Stat. 454, it was evident that Congress in the later act departed from its prior practice of making such instruments invalid or inadmissible as evidence.

There is some conflict of authority on the question whether the Federal Government has any authority under the constitution to prescribe rules of evidence for the State courts, and to preclude the acceptance in evidence of unstamped or improperly stamped instruments in the State courts. There are some State Supreme Court cases which in effect hold that the Federal Government has such power by ruling that unstamped or improperly stamped documents may properly be excluded from evidence. (Cases of *Chartiers, etc. Co. v. McNamara*, 72 Pa. St. 278; *Hoops v. Dunham*, 41 Ga. 109.) The weight of authority, however, seems to establish a contrary rule. One of the most exhaustive and instructive cases on the subject is *Small v. Slocumb*, 112 Ga. 279; 37 S. E. 481, wherein the sections of the 1898 Act to which attention has been called and which the Treasury Department holds are still in force and effect, were under consideration. It was held therein that Congress has no power to prescribe rules of evidence for a State court, that while it may be conceded that Congress has power to provide that no unstamped instrument shall be received in evidence in any of the Federal Courts, an attempt to extend this provision so as to make it applicable to the several States cannot be defended on the ground that it is necessary. It will be observed, however, that these State decisions have no application to the Federal Courts, where the laws of Congress prescribing rules of evidence must be observed. See case of *Sackett v. McCaffrey*, 131 Fed. 219. No suit may be brought in a Federal Court upon an instrument which lacks the required stamps, nor will such an instrument be received for filing or record by any Federal Government officer. It has been held in several State Supreme Court cases that a deed or note or other instrument is not rendered absolutely void by a failure to stamp it properly. (*Moore v. Moore*, 47 N. Y. 467; *Goodwine v. Wands*, 25 Ind. 101; *Adams v. Dale*, 29 Ind. 273; *D'Armond v. Dubose*, 22 La. Ann. 131.) It is also held in a number of cases, however, that such deed, note or instrument is rendered void if the omissions to stamp the same is willful or with intent to evade the tax. (*Dowell v. Applegate*, 7 Fed. 881; *Rowe v. Bowman*, 183 Mass. 488; *Harvey v. Willard*, 115 Ia. 564; *Ohio R. June. R. R. Co. v. Penna Co.*, 222 Pa. St. 573.) Many state government officers, even though not compelled so to do, will refuse to receive or recognize unstamped instruments, or will advise against making public record of the fact that the law has been violated. Banks will of course refuse to accept unstamped time drafts or notes because of the penal provisions of the law, to which they are subject, and transfer agents will likewise refuse to perfect the transfer of corporate stocks if the tax has not been paid.

CUSTOMHOUSE ENTRIES FOR CONSUMPTION OR WAREHOUSING.

[¶ 1272] **Schedule A8.** Entry of any goods, wares, or merchandise at any customhouse, either for consumption or warehousing, not exceeding \$100 in value, 25 cents; exceeding \$100 and not exceeding \$500 in value, 50 cents; exceeding \$500 in value, \$1.

[¶ 1273] **Art. 111. Customhouse entries by United States officials and representatives of foreign countries.**—Customhouse entries made by United States officials traveling as such on Government funds are not taxable. Likewise entries made by all representatives of foreign countries in their official capacity are by comity exempt.

WITHDRAWAL ENTRIES FROM CUSTOMS BONDED WAREHOUSES.

[¶ 1274] **Schedule A9.** Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, 50 cents.

[¶ 1275] **Art. 112. Entries for withdrawal of goods or merchandise.**—Entries for withdrawal of any goods or merchandise from customs bonded warehouses are subject to stamp tax.

PASSAGE TICKETS.

[¶ 1276] **Schedule A10.** Passage ticket, one way or round trip, for each passenger, sold or issued in the United States for passage by any vessel to a port or place not in the United States, Canada, or Mexico, if costing not exceeding \$30, \$1; costing more than \$30 and not exceeding \$60, \$3; costing more than \$60, \$5. This subdivision shall not apply to passage tickets costing \$10 or less.

[¶ 1277] **Art. 113. Passage tickets issued to Federal and State officials, military and naval forces, and certain foreign representatives.**—Passage tickets issued to United States Government officials, employees, military and naval forces, as well as officials of States and their political subdivisions, traveling in the course of their duty as such on vessels operated by private parties or by any government are not taxable when the amount of the passage is paid for by the United States Government, State or political subdivision thereof.

Ambassadors, ministers, and properly accredited diplomatic representatives of any foreign government to the United States are exempt from the payment of taxes on such passage tickets. All other foreign agencies not specifically mentioned above are subject to the tax as levied under this schedule.

[¶ 1278] **Art. 114. Passage tickets issued to private individuals.**—Passage tickets issued to private individuals traveling on vessels operated privately or by any government are taxable.

[¶ 1279] **Art. 115. Passage tickets to Porto Rico and Philippine Islands.**—Passage tickets to Porto Rico or Philippine Islands are taxable.

[¶ 1280] **Art. 116. Passage tickets to Hawaii and Alaska.**—Passage tickets issued to Hawaii and Alaska are not taxable.

[¶ 1281] **Art. 117. Prepaid orders for passage tickets.**—Prepaid orders for passage tickets are not subject to tax.

[¶ 1282] **Art. 118. Passage tickets issued on exchange orders purchased in Canada or Mexico.**—Passage tickets issued in the United States to ports not in the United States, Canada, or Mexico, on exchange orders purchased in Canada or Mexico, in connection with through transportation from points in Canada or Mexico, are subject to tax.

[¶ 1283] **Art. 119. Passage tickets to ports not in United States, Canada, or Mexico.**—(a) Passage tickets issued in the United States to ports not within the United States, Canada, or Mexico, on exchange orders, purchased other than in the United States, Canada, or Mexico, are subject to tax. (b) Passage tickets sold or issued in the United States for passage by any vessel to a port or place in Newfoundland are subject to tax.

[¶ 1284] **Art. 120. Passage tickets sold in United States from ports not in United States, Canada, or Mexico, to ports not in said countries, not subject to tax, unless.**—Passage tickets sold in the United States from ports not within the United States, Canada, or Mexico, to a port in the United States, Canada, or Mexico, are not subject to tax unless sold as part of a round trip or through ticket from a port in the United States, Canada, or Mexico.

PROXIES.

[¶ 1285] **Schedule A11.** Proxy for voting at any election for officers, or meeting for the transaction of business, of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10 cents.

[¶ 1286] **Art. 121. Tax on proxies attaches to the instrument.**—The stamp tax on proxies attaches to the instrument and is not measured by the number of grantors and grantees.

[¶ 1287] **Art. 122. Stamp may be affixed and canceled by either party to proxy.**—The stamp may be affixed and canceled either by the party who executes the proxy or by the party to whom the proxy is given.

[¶ 1288] Art. 123. **Directors of corporations officers.**—Directors of a corporation are officers within the meaning of the clause imposing a tax on proxies for voting at the election for officers of an incorporated company.

[¶ 1289] Art. 124. **Proxies to vote stock of building and loan associations.**—Proxies for the purpose of voting the stock of building and loan associations are taxable.

[¶ 1290] Art. 125. **Proxies executed and accepted before April 1, 1919.** Proxies executed and accepted before April 1, 1919, are not taxable, even though used subsequent to that date, except such as are taxable under the act of October 3, 1917.

[¶ 1291] Art. 126. **Proxy to vote for officers and for other purposes.**—A proxy for voting at any election for officers of a corporation and authorizing the proxy to act in such capacity upon all questions or matters presented at a stockholders' meeting, is subject to tax of 10 cents only.

[¶ 1292] Art. 127. **"Corporation" defined.**—The term "corporation" includes associations, joint stock companies, and insurance companies.

[¶ 1293] Art. 128. **Proxies sent out by corporations may be stamped after execution and delivery.**—Where proxies are sent out by a corporation to be executed and returned to the corporation or to the person named in the proxy, such proxies may be stamped after execution and delivery by the person receiving same as the agent of the person executing the proxy.

POWERS OF ATTORNEY.

(NOTE: For effect of failure to affix stamps see paragraph 1271.)

[¶ 1294] Schedule A12. **Power of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 25 cents.** This subdivision shall not apply to any papers necessary to be used for the collection of claims from the United States or from any State for pensions, back pay, bounty, or for property lost in the military or naval service, or to powers of attorney required in bankruptcy cases.

[¶ 1295] Art. 129. **Tax on power of attorney, when due.**—The tax on a power of attorney is due when the instrument is executed and delivered. Delivery includes depositing instrument in the mails.

[¶ 1296] Art. 130. **Tax attaches to the instrument.**—Tax is imposed on the instrument itself, and is not measured by the number of persons joining therein.

[¶ 1297] Art. 131. **Resolution of board of directors authorizing an officer of the corporation to sell, etc., stock or bonds, not taxed as power of attorney; otherwise in case of person not an officer.**—Where a corporation, by resolution of its board of directors, has empowered an officer thereof to sell, assign, or transfer stock or bonds standing in the name of the corporation, or to perform any act in the name of the corporation, such authority is not taxable as a power of attorney for the reason that it is necessary for a corporation to perform its corporate acts through one of its officers. If, however, a person other than an officer of the corporation acting in his official capacity is given this authority, the power of attorney so granted is subject to stamp tax.

[¶ 1298] Art. 132. **Revenue stamp required on each instrument executed under general power of attorney granted to person not an officer of the corporation.**—A general power of attorney granted by a board of directors to a person, other than an officer of a corporation acting in his official capacity for the purpose of transacting business of the corporation, including making conveyances of land and acknowledging deeds, is considered specific authority for each such transaction, and a revenue stamp is required on each instrument executed under the power of attorney.

[¶ 1299] Art. 133. **Power of sale embodied in mortgage not taxable.**—A power of sale embodied in a mortgage, authorizing and empowering a mortgagee himself, upon default, to make public sale of the property affected and to convey the title to the purchaser at such sale free from all rights or equity of redemption, thus avoiding the necessity of resorting to the courts for foreclosure, is not taxable.

[¶ 1300] Art. 134. **Powers of attorney contained in assignments of insurance policies.**—Powers of attorney contained in assignments, absolute or as collateral security, of insurance policies are not subject to tax.

[¶ 1301] Art. 135. **Powers of attorney from corporations to resident agents.**—Powers of attorney executed by corporations to resident agents authorizing the latter to accept service of process are taxable.

[¶ 1302] Art. 136. **Power of attorney to sell or transfer Government bonds.**—A power of attorney to sell or transfer Government bonds is taxable.

[¶ 1303] Art. 137. **Powers of attorney contained in assignments, for valuable consideration, conferring no authority upon assignee not implied by the assignment, not taxable.**—An assignment, for a valuable consideration, of debts, wages, mortgages, bonds, etc., ordinarily transfers to the assignee all the rights of the assignor and the remedies necessary for their enforcement, and the assignee acquires no further rights by the means of a power of attorney clause in the assignment than are conveyed by the instrument itself, and such pro forma power of attorney is therefore not taxable.

[¶ 1304] Art. 138. **Authority to secretary of corporation to transfer stock on the books not taxable.**—An instrument authorizing the secretary to transfer stock on the books of a corporation is not taxable as a power of attorney, but an instrument appointing an attorney in fact to transfer stock on the books of a corporation is taxable.

[¶ 1305] Art. 139. **Pro forma power of attorney to transfer bonds or stocks on books of corporation, printed on bond or stock certificate, not taxable.**—The pro forma power of attorney to transfer bonds or stocks on the books of a corporation, embodied in the assignment printed on the back of the bond or stock certificate, is not subject to tax.

[¶ 1306] Art. 140. **A warrant of attorney in a judgment note or promissory note authorizing confession of judgment.**—The clause in a judgment note or a promissory note authorizing confession of judgment is not taxable as a power of attorney.

[¶ 1307] Art. 141. **Warrant of attorney in a lease.**—A warrant of attorney embodied in a lease is not taxable.

[¶ 1308] Art. 142. **Power of attorney mailed in United States to point abroad; power of attorney mailed abroad to party in United States.**—A power of attorney executed and mailed within the United States to a foreign point is subject to tax, but a power executed in a foreign country and mailed there to an agent in the United States is not subject to tax.

[¶ 1309] Art. 143. **Power of attorney to sell, etc., shares of capital stock, taxable, unless.**—A power of attorney to sell, assign, and transfer shares of capital stock is subject to tax unless it is given in connection with a deposit of the stock as security for a loan.

[¶ 1310] Art. 144. **Power of attorney authorizing vendee of shares of stock to transfer same.**—A power of attorney by which a person executing the instrument sells, assigns, and transfers shares of stock and appoints the vendee agent for the transfer is not subject to tax.

[¶ 1311] Art. 145. Copy of power of attorney, printed on form provided by Government and filed in executive department.—Where the original power of attorney has been properly stamped and a copy of it is printed on a card (Form 272) provided by the Government, and the card is filed in the executive departments of the Government or with a collector of internal revenue, such copy is not subject to tax.

[¶ 1312] Art. 146. Power of attorney authorizing deputy to have access to safe.—A power of attorney authorizing a deputy to have access only to a safe or safety deposit box is not subject to tax, but a power of attorney to have access and control over its contents is subject to tax.

[¶ 1313] Art. 147. Power of attorney authorizing officer of Federal reserve bank to assign United States bonds deposited as security.—A power of attorney executed by a bank, authorizing a designated officer of a Federal reserve bank to assign United States bonds, deposited with the Federal reserve bank, and designed to protect it in event of default in payment of a loan is not taxable.

[¶ 1314] (Added by T. D. 2913.) Powers of attorney authorizing the collection or sale of U. S. bonds deposited in lieu of sureties, not taxable.—Powers of attorney given by persons who deposit United States Liberty bonds or other bonds of the United States as security in lieu of surety or sureties on penal bonds under the provisions of Section 1320 of the Revenue Act of 1918, authorizing the official having authority to approve such penal bonds to collect or sell such United States bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bonds, are not subject to the stamp tax.

[¶ 1315] Art. 148. Powers of attorney executed and delivered before April 1, 1919.—Powers of attorney executed and delivered before April 1, 1919, are not taxable, even though used subsequent to that date, except such as are taxable under the act of October 3, 1917.

PLAYING CARDS.

[¶ 1316] Schedule A13. Playing cards: Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, a tax of 8 cents per pack.

[¶ 1317] Art. 149. Person receiving for sale packages of playing cards opened and on which stamps are broken.—Where packages of playing cards are opened and the stamps thereon broken, any person afterwards receiving same for sale must pay tax and affix new stamps to the packages.

[¶ 1318] T. D. 2817. Collection of tax on playing cards on and after April 1, 1919, and monthly returns of manufacturers and importers of playing cards.—Subdivision 13, Schedule A, Title XI, of the Revenue Act of 1918 provides: "That there shall be levied, collected and paid upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, a tax of 8 cents per pack."

2. The Act of August 28, 1894, imposed a tax of 2 cents per pack on playing cards. This was amended by the Act of October 3, 1917, which imposed an additional tax of 5 cents per pack, or a total of 7 cents on each pack. The present law amends the former laws and provides a tax of 8 cents per pack as above noted, an increase of 1 cent per pack over the tax paid under the Revenue Act of 1917.

3. Section 1100 of the new Act makes this rate effective on and after April 1, 1919.

4. The new rate of tax does not apply to cards manufactured and removed, tax paid, prior to April 1, 1919, in the hands of jobbers and retail dealers, unless the packs to which the stamps affixed have been broken and the cards re-packed, in which event, the dealer so packing them would be liable to the tax as in the case of an original manufacturer, under the provision of T. D. 1100.

5. Section 1305 provides: "That all administrative special or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe."

6. Section 1311 provides: "That where the rate of tax imposed by this Act, payable by stamps is an increase over previously existing rates, stamps on hand in the collectors' offices and in the Bureau of Internal Revenue may continue to be used until the supply on hand is exhausted, but shall be sold and accounted for at the rates provided by this Act, and assessment shall be made against manufacturers and other taxpayers having such stamps on hand on the day this Act takes effect for the difference between the amount paid for such stamps and the tax due at the rates provided by this Act."

7. Under authority of the above sections, the following regulations are hereby promulgated:

8. Every manufacturer or importer of playing cards will render to the collector of the district wherein the factory is located, a sworn inventory in duplicate on or before April 30, 1919. A form of inventory will be furnished for this purpose, and the difference in rate of tax or 1 cent on each attached and unattached stamp on hand as shown by the inventory, should be transmitted to the Collector of Internal Revenue with the inventory.

9. Every manufacturer or importer of playing cards will be required to render a monthly report, under oath, on Form 749, in duplicate, showing the number of cards on hand at the first of the month, the number manufactured or received, likewise the number withdrawn, tax paid, or free of tax for export or use of the United States, and the number on hand at the end of the month, together with like information relative to the value of stamps received and used during the month. The report should be rendered on the last day of the month, or on or before the 10th day of the succeeding month. Blank returns, Form 749, may be procured from collector of internal revenue. Collectors will carefully verify these inventories and returns, reporting on Sales Tax lists, Form 736, as advance collection amounts of additional tax forwarded with inventories. If the tax shown to be due does not accompany inventory, the name of the manufacturer or importer should nevertheless be reported on the list for assessment in column 4. These taxpayers will be entered as a separate class on the last sheets of Form 736, assessment list Sales Tax Division, beginning as heretofore instructed at the top of the left hand page of the new sheet.

10. One copy of the inventory and of each monthly return as rendered, will be forwarded to this office by the collector and the other copy retained in his office. If it is necessary to make any corrections or changes in the inventories or returns, such corrections should be made on a separate sheet securely attached to the inventory or return, and not on the face thereof.

11. On and after April 1, 1919, collectors selling stamps on hand at the old rate, will overprint same with words, "Revenue Act of 1918," require payment, and account therefor at the rate of 8 cents per stamp.

12. Overprinting on the new class A stamps not being furnished for playing cards will not be necessary, as such stamps do not show the rate of tax.

13. It is not to be understood that these regulations revoke or in any way affect prior Treasury Decisions or rulings of the Department, covering points involved under this or prior acts, except in cases where such previous rulings conflict with these regulations.

14. Attention is called to the following penalties imposed by the Act of August 28, 1894, for failure to observe provisions of the statute.

15. Section 39. Adhesive stamps to be affixed to each package, and canceled by the person using the stamp. Penalty \$50.00.

16. Section 40. Manufacturer to register with the collector of the district. Failure to register, penalty \$50.00.

17. Section 42. Penalty for counterfeiting, defacing or removing stamp or illegal use of the same, fine of \$1,000.00, 5 years' imprisonment, or both, at the discretion of the court.

18. Section 43. Penalty for removal or sale of playing cards (except for export) without having stamp affixed, \$50.00.

19. Section 44. Manufacturer removing or reusing any stamp, wrapper, or cover for the purpose of evading the tax, liable to a fine of \$50.00 and forfeiture.

20. Section 45. Penalty for selling or exposing for sale, removing, or concealing playing cards without having affixed the stamps thereto, \$50.00 and forfeiture. (T. D. 2817, April 2, 1919.)

PARCEL-POST PACKAGES.

[¶ 1319] **Schedule A14. Parcel-post packages:** Upon every parcel or package transported from one point in the United States to another by parcel post on which the postage amounts to 25 cents or more, a tax of 1 cent for each 25 cents or fractional part thereof charged for such transportation, to be paid by the consignor.

No such parcel or package shall be transported until a stamp or stamps representing the tax due shall have been affixed thereto.

[¶ 1320] **Art. 150. Shipments by Federal reserve banks.**—Parcel-post shipments made by Federal reserve banks are exempt from taxation.

[¶ 1321] **Art. 151. Packages to or from Hawaii or Alaska.**—Parcel-post packages mailed to or from Hawaii and Alaska are taxable.

[¶ 1322] **Art. 152. Packages to or from Porto Rico, Philippine Islands, Canal Zone, and Virgin Islands.**—Parcel-post packages mailed to or from Porto Rico, Philippine Islands, Canal Zone, and the Virgin Islands are not taxable.

[¶ 1323] **Art. 153. Packages mailed from one point to another in Porto Rico.**—Parcel-post packages mailed from one point in Porto Rico to another point in the same island are not taxable.

[¶ 1324] **Art. 154. Packages to United States naval vessels or United States Expeditionary Forces.**—Parcel-post packages mailed to United States naval vessels in foreign waters or to United States Expeditionary Forces abroad are not taxable.

[¶ 1325] **Art. 155. Packages sent by a State or political subdivision thereof.**—Parcel-post packages sent by a State, or political subdivision thereof, in the exercise of its governmental functions, are not subject to tax. To relieve a package from the payment of the tax, the postmaster at the point of mailing should, however, require satisfactory evidence that it is sent by an officer or employee of a State or subdivision of a State, in the discharge of such functions.

FOREIGN INSURANCE POLICIES.

[¶ 1326] **Schedule A15.** On each policy of insurance, or certificate, binder, covering note, memorandum, cablegram, letter, or other instrument by whatever name called whereby insurance is made or renewed upon property within the United States (including rents and profits) against peril by sea or on inland waters or in transit on land (including transshipments and storage at termini or way points) or by fire, lightning, tornado, windstorm, bombardment, invasion, insurrection or riot, issued to or for or in the name of a domestic corporation or partnership or an individual resident of the United States by any foreign corporation or partnership or any individual not a resident of the United States, when such policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or district of the United States within which such insurer is authorized to do business, a tax of 3 cents on each dollar, or fractional part thereof of the premium charged: Provided, That policies of re-insurance shall be exempt from the tax imposed by this subdivision.

Any person to or for whom or in whose name any such policy or other instrument is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such policy or other instrument, shall affix the proper stamps to such policy or other instrument, and for failure to affix such stamps with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

[¶ 1327] **Art. 156 (amended by T. D. 2891).** (1) **Authority for regulations.**—Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

(2) **Definitions.**—When used in these Regulations—

(a) The term “insurer” includes any person, copartnership, association or corporation transacting the business of insurance, and also any agent or broker, wherever applicable;

(b) The term “insurance” includes every manner of providing indemnity against risks upon property of any description (including rents and profits) from peril by sea or inland waters or in transit on land (including transshipments and storage at termini or way points) or by fire, lightning, tornado, windstorm, bombardment, invasion, insurrection, or riot;

(c) The term “policy of insurance” includes any instrument by whatever name the same is called whereby insurance is made or renewed by the insurer, as policies, binders, certificates, open policies, covering notes, memoranda, cablegrams or letters;

(d) The term “other instrument” includes any instrument by which insurance is made or renewed, i. e., by which the relationship of insurer and insured is created or evidenced, whether it be a letter of acceptance, cablegram, or other instrument by whatever name called;

(e) The expression “whereby insurance is made or renewed” includes any evidence or confirmation of a binding contract of insurance whereby a risk is assumed by the insurer;

(f) The term “issue” means the act whereby insurance is made or renewed;

(g) The term “premium charged” means the total premium payable during the life of a contract of insurance and shall include any additional assessment or charge in the nature of a premium which may be assessed or charged during the life of a contract of insurance, whether payable in one sum or in installments and however paid (and though never paid if the contract of insurance be delivered and accepted or otherwise becomes binding upon the insurer);

(h) The term “premium” means the agreed price for assuming and carrying the risk. It includes all that is received by the underwriter therefor and

is in fact the total consideration receivable for underwriting the risk, whether in one sum or in installments, during the life of the policy;

(i) The term "United States" includes the States of the United States, the Territories of Alaska and Hawaii, and the District of Columbia.

[¶ 1327 (a)] Art. 157. **Effective date.**—Policies of insurance which are issued and accepted on and after April 1, 1919, regardless of when the insurance thereunder becomes effective, are subject to tax; but policies which were issued and accepted prior to April 1, 1919, if issued in the usual course of business and according to general custom and not for the purpose of evading the tax, are not subject to tax.

[¶ 1327 (b)] Art. 158. **Persons liable.**—The insurer, the agent, or broker, effecting, accepting, placing or soliciting the insurance, and also the insured are each liable for the tax.

[¶ 1327 (c)] Art. 159. **What instruments must bear a stamp.**—(a) The stamp must be affixed to the first instrument by which the insurance is made or renewed, i. e., by which the relationship of insurer and insured is created or evidenced, whether it be a letter of acceptance, cablegram, or other instrument by whatever name called;

(b) In the case of so-called "open policies" or "open cargo covers," where the amount of the premium is not definitely determined at time of issuance, the stamps may be affixed to the receipts for monthly or other payments if proper notation be made upon such receipts identifying the original instruments to which they apply;

(c) In the case of a binder or other instrument whereby insurance is made or renewed, issued without agreement as to the premium to be charged, stamps must be affixed when the amount of the premium is determined.

[¶ 1327 (d)] Art. 160. **Insured to retain policy for two years.**—The person having control or possession of a policy of insurance or other instrument to which documentary stamps shall be affixed according to law shall retain such instrument for the period of two years from the date of issuance thereof, for the purpose of enabling internal revenue officers to certify the fact that payment of the full amount of tax due thereon has been made.

[¶ 1327 (e)] Art. 161. **Subsequent instruments shall indicate prior document to which stamps are affixed.**—Any policy of insurance or other instrument which is subsequent to or which confirms a contract of insurance that is created or evidenced by any prior instrument by which insurance was originally made or renewed, shall bear a notation designating such prior instrument (hereinafter referred to as the original instrument) and showing that the proper stamps have been affixed thereto and canceled. By this is meant that, if a letter, cablegram, or other instrument is so worded that it establishes or evidences a contractual relation between the insurer and the insured, executed or executory, by which insurance is made or renewed, or by which the relationship of insurer and insured is created or evidenced, such instrument shall be construed as the original instrument, and must have stamps of the proper amount affixed to it, and any policy or other instrument which is subsequent to or which confirms such original instrument must bear thereon the notation above indicated.

[¶ 1327 (f)] Art. 162. **Subsequent instruments that must be stamped.**—In case an instrument subsequent to the original instrument provides for the payment of a premium greater than the premium provided for in the original instrument, such subsequent instrument must have affixed thereto stamps equal to the tax imposed upon the additional premium charged therein; also such subsequent instrument must bear notation of the stamps affixed to the original

instrument (see Art. 160). The same rules apply to any riders, endorsements, or other forms attached to or forming a part of any original or subsequent instrument where such rider, endorsement, or other form provides for the payment of a premium greater than theretofore charged.

[¶ 1327 (g)] Art. 163. **Unstamped instruments and those bearing no notation of stamping.**—Failure (a) to stamp the original instrument by which insurance is made or renewed, whether it be a letter of acceptance, cablegram, or other instrument by whatever name called, or (b) to indicate that such original instrument was properly stamped on any policy or other instrument which is subsequent to or which confirms the contract of insurance that is created or evidenced by any prior instrument by which insurance was made or renewed, will be held to raise a presumption of an intent to evade the payment of tax under the provisions of the Act.

[¶ 1327 (h)] Art. 164. **Measure of tax.**—The tax is measured by total premium paid, including any additional assessment or charge in the nature of a premium on each policy of insurance or other instrument by which insurance is made or renewed, and is at the rate of 3 cents on each dollar or fractional part thereof of such premium; for example, upon a premium charge of \$10.10 the tax imposed is 33 cents, being 3 cents for each dollar and 3 cents for the fractional part of a dollar.

[¶ 1327 (i)] Art. 165. **Insurance on commodities exported.**—(a) No tax is imposed upon the premium charged for insurance issued to cover commodities which are in the actual process of exportation and which have begun their voyage or preparation for the voyage from the United States;

(b) If a policy or other instrument is issued covering both export and non-export property, the tax will be computed upon the full amount of the premium charged, unless such instrument clearly indicates the property for export and the premium charged for the insurance thereon.

[¶ 1327 (j)] Art. 166. **Movable property.**—Movable property such as rolling stock of railroads, ships, vessels, barges, and other similar movable property, shall be held to be property within the United States if the principal place of business of the corporation or partnership, owning and controlling the same, is located within the United States, or in the case of an individual, if he resides in the United States, unless such property is permanently located without the United States for the purpose of ordinary use. The nation of registry of a vessel shall have no bearing upon the location of the property in the same.

[¶ 1327 (k)] Art. 167. **Credits and refunds.**—In case of a policy of insurance or other instrument is issued and accepted by the insured, and afterwards, for any reason, such insurance does not become effective, the value of the stamps affixed thereto will be refunded upon a proper claim presented to the collector of internal revenue.

[¶ 1327 (l)] Art. 168. **Penalties.**—In addition to the penalties provided by section 1102 of the Revenue Act of 1918, subdivision 15 of Schedule A imposes a penalty of double the amount of the tax upon (a) any person to or for whom or in whose name any such policy or other instrument is issued, or (b) any solicitor, agent, or broker acting for or on behalf of such person in the procurement of any such policy or other instrument, who fails to affix the proper stamps to such policy or other instrument, with intent to evade the tax.

[¶ 1327 (m)] Art. 169. **Returns.**—No monthly return or monthly statement showing a list of policies or other instruments by which insurance was made or renewed upon property located in the United States by a foreign corporation or partnership or nonresident individual will at this time be required from any person to or for whom or in whose name such policy or other instrument is issued, or from the solicitor or broker acting directly or indirectly for

or on behalf of such person, but each person, solicitor, or broker accepting, placing, or soliciting such policy or other instrument shall keep a record of each policy or other instrument subject to the tax imposed by this subdivision by which he has directly or indirectly made, placed, solicited, or assisted in the making, or renewal of, such insurance, or for which he has paid or received compensation, and shall be prepared to furnish full information to the Commissioner at any time upon demand. (T. D. 2891, approved July 17, 1919.)

MISCELLANEOUS.

[¶ 1328] Art. 170. **Stamp affixed and canceled can not lawfully be removed and affixed to another instrument; refund.**—A stamp affixed to an instrument and canceled can not lawfully be removed therefrom and affixed to another instrument requiring a stamp. Amounts paid for stamps used in excess, or on instruments not actually effective and for which a substitute is prepared and stamped, or on instruments not subject to tax may be refunded, upon claim properly presented to the collector.

[¶ 1329] Art. 171. **Both parties to taxable instrument liable.**—Both parties to a taxable instrument are responsible to the Government for affixing and canceling stamps in the required amount. The law does not prohibit parties in interest from entering into an agreement as to which of them shall actually pay same.

[¶ 1330] Art. 172. **Stamp taxes under revenue act of 1917; present regulations generally applicable.**—As documentary stamp taxes under the war revenue act of October 3, 1917, were very similar to those imposed under the revenue act of 1918, these regulations are generally applicable to all taxable documents issued and delivered on and after December 1, 1917.

[¶ 1331] Art. 173. **Schedule A of revenue act of 1918 an extension of schedule A of the revenue act of 1917.**—The revenue act of 1918 simply supercedes and extends schedule A, Title VIII, of the act of October 3, 1917, except in a few instances where the language of the present act slightly modifies or amends that of the former act. These slight changes will be readily noticeable by a comparison of the two acts. Schedule A 15 of the revenue act of 1918, however, is entirely new.

[¶ 1332] Art. 174. **Former stamp-tax acts.**—For still older acts of Congress requiring stamps to be affixed to certain written instruments, see act of July 1, 1862, schedule B following section 110 (12 Stat., 479); act of March 3, 1863, section 6 (12 Stat., 720); act of June 30, 1864, section 151 (13 Stat., 291); act of March 3, 1865, section 1 (13 Stat., 469); act of July 13, 1866 (14 Stat., 141); act of June 23, 1874, section 1 (18 Stat., pt. 3, 250). The act of June 6, 1872, section 36 (17 Stat., 256), provided for the repeal, on and after October 1, 1872, of stamp taxes on instruments, except the tax of 2 cents on bank checks, drafts, and orders, which was repealed by the act of March 3, 1883 (22 Stat., 488). Taxes were imposed by the act of June 13, 1898, on instruments and documents, under schedule A thereof, and were repealed in part by the act of March 2, 1901, and wholly repealed by the war-revenue repeal act (act of April 12, 1902) (32 Stat., 96), taking effect July 1, 1902. Taxes were imposed by schedule A of the act of October 22, 1914, upon certain instruments and documents, from December 1, 1914, to December 31, 1915. These taxes were continued in force by the joint resolution of December 17, 1915, until December 31, 1916, but were repealed by the act of September 8, 1916, as of that date.

DENOMINATIONS OF DOCUMENTARY STAMPS.

[¶ 1333] Art. 175. **Documentary stamps issued.**—Under authority conferred upon the Commissioner of Internal Revenue in section 1105 of said Act, the following adhesive stamps have been prepared:

Documentary stamps, Schedule A: One cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 25 cents, 40 cents, 50 cents, 80 cents, \$1, 2, \$3, \$5, \$10, \$30, \$60, \$100, \$500, \$1,000.

PURCHASE OF STAMPS.

[¶ 1334] Art. 176. **Stamps, where purchased.**—The above stamps may be purchased from collectors and stamp deputy collectors of internal revenue.

[¶ 1335] Art. 177. **Assistant Treasurers of the United States, designated depositaries, and postmasters to be furnished stamps; bond required.**—In addition, provision has been made in the Act for the delivery of stamps by collectors without prepayment to any Assistant Treasurer of the United States designated depositary of the United States, or postmaster, who may be required to give bond for the value of stamps so deposited. It is not mandatory upon the persons named to make the required bonds and secure the stamps.

[¶ 1336] Art. 178. **Stamps on articles manufactured in foreign countries.**—Stamps to be affixed to articles manufactured in a foreign country and imported into the United States may be purchased and forwarded to the place of manufacture and there affixed to the articles before the same are packed for importation.

CANCELLATION OF DOCUMENTARY STAMPS.

[¶ 1337] Art. 179. **Cancellation of stamps.**—In any and all cases where an adhesive stamp shall be used for denoting any tax imposed by Schedule A of the revenue act of 1918, the person using or affixing the same shall write or stamp thereon, or cause to be written or stamped thereon, with ink, the initials of his name and the date (year, month, and day) in which the same shall be attached or used; or shall, by cutting and canceling said stamp with a machine or punch, which will affix the initials and date as aforesaid, so deface the stamp as to render it unfit for reuse. The cancellation by either method should not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

[¶ 1338] Art. 180. **Additional cancellation required in case of stamps of value of 10 cents or more.**—In addition to the foregoing, stamps of the value of 10 cents or more shall have three parallel incisions made by some sharp instrument lengthwise through the stamp after the stamp has been attached to the document; provided, this will not be required where stamps are canceled by perforation.

STAMPS UNDER FORMER ACTS; POSTAGE STAMPS.

[¶ 1339] Art. 181. **Documentary stamps only to be used.**—Documentary stamps only must be used upon papers, documents, and instruments subject to tax as provided in Schedule A, except as provided in Regulations 40, Revised 1919, relating to stamp taxes on issue and transfers of stock and sales of products for future delivery.

[¶ 1340] Art. 182. **Documentary stamps issued under act of October 22, 1914, and act of October 3, 1917.**—Documentary revenue stamps issued under act of October 22, 1914, and under act of October 3, 1917, may be used to pay stamp taxes required by the revenue act of 1918.

[¶ 1341] Art. 183. **Ordinary postage stamps not to be used for internal-revenue taxes.**—Ordinary postage stamps can not be used for the payment of any internal-revenue taxes.

REDEMPTION OF STAMPS.

[¶ 1342] Art. 184. **Stamps rendered useless.**—Where documentary stamps are rendered useless by gumming or sticking together in transit or

otherwise without the fault of the purchaser, they may be exchanged by a collector for other stamps of exactly the same quantity and denomination.

AFFIXING STAMPS.

[¶ 1343] Art. 185. **Two or more stamps may be used, when.**—Where a stamp of the proper denomination to pay the tax due on an article or document can not be procured, two or more stamps may be used. In such case as few stamps as possible should be attached and each stamp used should be canceled in the manner provided by regulation.

DUTIES OF OFFICERS.

[¶ 1344] Art. 186. **Revenue officers to make investigations.**—It is the duty of revenue officers in canvassing for taxes due to investigate as to violations of Titles VIII of the act of October 3, 1917, and Title XI of the act of February 24, 1919, and for this purpose they should visit all State, county, and municipal offices, also banks and trust companies, having to do with the issuance, handling, or recording of documents taxable under these Titles, as well as customs houses and customs bonded warehouses and steamboat offices and agencies for such information as will lead to the detection of violators of said Titles.

[¶ 1345] Art. 187. **Revenue agents and collectors to report.**—Revenue agents and collectors will report to this office all such violations, separate letter reports being made in each case marked "Sales Tax Division," and where proper stamp tax has not been paid and requisite stamps affixed the amount of tax due should be shown.

[¶ 1346] Art. 188. **Quarterly reports.**—All cases so disposed of should be reported to this office quarterly on Form 8. Separate letter reports need not be made in each instance reporting post stamping, except in cases where prosecution is recommended or offer in compromise under section 3229, R. S., is made.

[¶ 1347] Art. 189. **Stamp tax to be reported for assessment only where instruments can not be stamped.**—Only in cases where instruments are no longer in existence or can not possibly be stamped will tax be reported for assessment, but in no case must a receipt, Form 1, be issued for a tax paid by a purchaser of documentary stamps (sec. 3183, R. S.).

[¶ 1348] Art. 190. **Regulations covering tax on issue, sales, and transfers of stock and sales of products.**—See separate regulations (No. 40) relative to collection of tax on issue, sales, and transfers of stock and on sales of products for future delivery.

AUTHORITY FOR REGULATIONS.

[¶ 1349] Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

[¶ 1350] Art. 191. **Promulgation of Regulations.**—In pursuance of the statute the foregoing Regulations are hereby made and promulgated, and all rulings inconsistent herewith are hereby revoked.

Approved October 26, 1920. (Released November 12, 1920.)

WM. M. WILLIAMS,
Commissioner of Internal Revenue.

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STAMP TAX
on
ISSUES, SALES, AND
TRANSFERS OF STOCK
and
SALES OF PRODUCTS
FOR FUTURE DELIVERY

UNDER TITLE XI OF THE REVENUE ACT OF 1918

Law,
Regulations No. 40 (Revised), and
Treasury Decisions

Indexed

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LAW,
REGULATIONS No. 40 (REVISED) AND
TREASURY DECISIONS
RELATING TO

ISSUES, SALES AND TRANSFERS OF
STOCK AND SALES OF PRODUCTS
FOR FUTURE DELIVERY

ISSUES OF STOCK.

[¶ 1351] **Schedule A3. Capital stock, issued:** On each original issue, whether on organization or reorganization, of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, on each \$100 of face value or fraction thereof, 5 cents: Provided, That where a certificate is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof.

[¶ 1352] **Article 1. When tax accrues.**—Stock is deemed to be issued when it is subscribed for and the subscription is accepted by the corporation, regardless of the time of delivery of the certificate.

Note: By letter of March 25, 1920, the deputy Commissioner advised an inquirer that the tax imposed by Sub. 3 of Schedule A upon the original issue of stock applies when the stock is subscribed for and the subscription is accepted, regardless of the time of delivery of the certificate. The direction by the subscriber to deliver such stock to other parties involves the transfer of the right to receive stock and is subject to stamp tax under the provisions of Schedule A-4.

[¶ 1353] **Art. 2. Rate of taxation.**—(a) All certificates or instruments, under whatever designation issued, having a par or face value, representing shares of stock, or of profits, or of interest in property or accumulations, in any corporation, joint-stock company or association, are subject to tax at the rate of 5 cents on each \$100 of the face value or fraction thereof.

(b) All certificates of stock, or of profits, or of interest in property or accumulations, in any corporation, issued without par or face value, are subject to the tax of 5 cents on each share, unless the actual value is in excess of \$100 per share, in which case the tax is 5 cents on each \$100 of actual value or fraction thereof.

[¶ 1354] **Art. 3. Computation of the tax.**—(a) The tax is computed upon the par or face value, if the certificates have a face value, of the certificates of stock, or of profits, or of interest in property or accumulations, of any corporation, joint-stock company or association, as set forth in the articles of incorporation, or agreement of association or of partnership, whether such par or face value appear on the face of the certificate or not.

(b) Where a certificate represents more than one share of stock (however large the number of shares), on the issue of such certificate the tax is reckoned on its par or face value and not on the par or face value of each separate share of stock which it represents.

(c) The tax, whether on issue or on transfer, is measured not by the amount paid in, on, or for the stock, but by the par face value in the case of shares having a face value; and by the actual value in the case of shares without face value, but having an actual value in excess of \$100 per share.

(d) In the case of a certificate without par or face value, the actual value of the certificate is to be determined by the market price.

[¶ 1355] **Art. 4 (as amended by T. D. 3118). Issues subject to tax.**—(a) The issue of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, joint-stock company or association, is subject to tax.

(b) The issue to the beneficiary of certificates covering shares in the nature of shares of stock, where a number of persons pool their individual properties and appoint trustees having a definite term of office for the purpose of managing it and retain certain rights of control over the property and a voice in the selection of the trustees who are authorized to issue the certificates, is subject to tax.

(c) The issue by a corporation of business property investment bonds, or other instruments wherein it is certified that the holder thereof is the owner of an interest in specified real property, the legal title to which has been previously conveyed to a trustee and whereby the corporation issuing the same agrees to manage the property and distribute the proceeds in a certain manner, is subject to tax.

(d) The issue by a corporation, joint-stock company or association, of stock in exchange for property, real or personal, or for the purpose of purchasing the business or assets of another concern, is subject to tax.

(e) The issue of certificates of stock by joint-stock land banks is subject to tax.

(f) The issue of stock dividend and fractional scrip certificates is subject to tax.

Note: The Deputy Commissioner advised an inquirer January 9, 1920, that the tax on original issue of scrip certificates for fractional shares, is based on par value of each certificate for fractional share issued and not on the value of each full share.

(g) The issue of temporary or interim certificates of stock is subject to tax.

(h) The issue of certificates of stock upon reorganization by a corporation is subject to tax. (Read pars. 1356 and 1357.)

(i) The issue of stock by a consolidated corporation in exchange for stock of the consolidating corporations is subject to tax.

(j) The issue of stock, in addition to its already existing stock, by the continuing corporation in case of a merger of corporations, is subject to tax.

(k) The issue of certificates of stock outside the United States by a domestic corporation is subject to tax.

(l) The issue of a greater number of shares of no par-value stock in lieu of a smaller issue of such shares, previously made, without any change in the amount of the capital assets of the issuing corporation, is subject to stamp tax in the amount of the difference between the tax computed upon such issue and the tax computed upon the issue which it replaces. (This par. added by T. D. 3118, approved Jan. 15, 1921.)

[¶1356] T. D. 3002. Preferred stock of one class and common stock, issued on exercise of right of exchange and conversion by holders of preferred stock of another class, held not to be an "original issue."—The U. S. Circuit Court of Appeals, for the Second Circuit, on February 19, 1920, affirmed the judgment of the U. S. District Court for the Southern District of New York in *W. H. Edwards, Collector, plaintiff—in error v. Wabash Railway Company, defendant-in-error*. The Court said in part:

"The precise question now presented under the present Act arose under the prior Act of 1898 and was submitted to the Treasury Department for a ruling. It appears that the Treasury Department at that time ruled that if there had been no change of ownership but merely a substitution in the hands of the same stockholder of certificates for one class of stock in lieu of certificates for another class, the transaction was not within the Statute and was not taxable. (T. D. 20694, February 7, 1899.)

"At the outbreak of the European War the Statute was again re-enacted in substantially the same form in the Act of Congress approved on October 22, 1914, and which is known as the Emergency War Revenue Act. (38 Statutes at Large, 753.) The Treasury Department upon the passage of the Act of 1914 issued a series of instructions to Internal Revenue officers in which it called attention to important rulings made under the Act of 1898. Those instructions declared that as the provisions of the Emergency War Revenue Act of 1914 embodied in Schedule A thereof were identical with those of the earlier Act, the rulings made by the Department under the former Act should be given weight in considering the requirements of the later Act 'as Congress in practically re-enacting the provisions of the earlier Act must be considered to have done so in the light of the Administrative construction given to that Act.' In one of its official circulars issued at that time the Department directed specific attention to T. D. 20694, which it summarized as follows:

"'Preferred Stock issued in lieu of Common Stock not taxable where there is no change of ownership.' (T. D. 2051, March 9, 1914.)

"It is a familiar and well established rule that where a statute that has been construed by the courts has been re-enacted in the same or substantially the same terms the legislature is presumed to have been familiar with its construction, and to have adopted it as a part of the law unless a different intention is indicated. And the same principle is applied to statutes and parts of statutes which have been re-enacted after they have been construed by the legislative or executive departments of the government. The Supreme Court has decided that the re-enactment by Congress, without change, of a statute which had previously received long continued executive construction, is an adoption by Congress of such construction. *United States v. Falk*, 204 U. S. 143, 152; *United States v. Cerecedo Hermanos y Compania*, 209 U. S. 337, 339. We think that principle is applicable to the question herein involved. Congress by re-enacting the Act without substantial change in the provision now under consideration adopted the construction which the Treasury Department for fifteen years had placed upon it. We are under obligation to give to the Act the interpretation which Congress intended it should have.

"We may remark further, what we think defendant must admit, that in view of the construction placed by the Treasury Department on similar Acts in 1899 and in subsequent years prior to Treasury Decision 2752 rendered August 14, 1918, overruling the earlier construction which held such an exchange of certificates not subject to tax, renders the question herein presented one of considerable doubt and if doubtful then the doubt must be resolved in the plaintiff's favor in accordance with the well established rule that where there is an ambiguity in the language of a statute imposing a tax, and that ambiguity raises a doubt as to the legislative intent, the persons upon whom it is sought to impose the burden are to be given the benefit of the doubt."

This decision is incorporated in T. D. 3002, not as a ruling by the Treasury Department but for the information of Internal Revenue officers and others concerned.

Note: Since the above court decision is given in the Treasury decision, not as a ruling, there appears to be no change of policy on the part of the Government in relation to the stamping of original issue stock in connection with reorganizations, as stated as Sub. (h), Article 4 herein (par. 1355).

[¶ 1357] Stamp Tax liability on account of original issue and transfer of stock and conveyance of real property incident to the reorganization of a corporation under the laws of another state. An inquiry was made to the Commissioner relative to stamp tax liability on account of original issue and

transfer of stock and conveyance of real property incident to the reorganization of an Illinois corporation involving the transfer of all its assets to a newly organized Ohio corporation. The new corporation bears the same name and planned to acquire the property and continue the business of the Illinois corporation, taking over all assets and assuming all liabilities. In payment for the property the Ohio corporation planned to deliver to the Illinois corporation certificates of stock issued in the names of the present stockholders and for the number of shares owned by them, respectively in the Illinois corporation. The Illinois corporation proposed to receive from its stockholders its own shares of stock, in exchange for a like number of shares of the Ohio corporation and would then be dissolved. The identical property would remain in the possession of the identical stockholders and the proportionate interest of each stockholder would remain unchanged, the sole purpose of the transaction being merely to domicile the present enterprise in Ohio as a matter of convenience.

In his reply to this inquiry under date of February 26, 1920, the Commissioner said: "You are advised that where a company gives up its articles of incorporation in the State of Illinois and is incorporated in the State of Ohio, the application of stamp tax is to be determined by the method followed. In any event stamp tax on original issue applies to the stock to be issued by the new corporation. The transfer of stock among the assets of the old corporation to the new corporation is subject to stamp tax. Conveyance of real property from the old corporation to the new corporation in consideration of the issue of new stock to the old corporation or to its stockholders is subject to stamp tax on the basis of the value of the property. If the new stock is issued to the old corporation the transfer of that stock from the old corporation to its stockholders is subject to stamp tax. If the new stock is issued to the stockholders of the old corporation the transfer of the right to receive that stock from the old corporation is subject to transfer stamp tax additional to the original issue stamp tax. If the old stock is surrendered to the old corporation for extinguishment no transfer stamp tax accrues. If the old stock is surrendered to the new corporation and constitutes it a corporate stockholder that surrender is taxable."

[¶ 1358] Art. 5 (as amended by T. D. 3118). **Issues subject to tax.**—(a) The issue of stock by cooperative building and loan associations, organized and operated exclusively for the benefit of their members and making loans only to shareholders, or by mutual ditch or irrigating companies, is not subject to tax.

(b) The issue of certificates of stock by Federal land banks is not subject to tax.

(c) The issue of "rights" to subscribe for stock by any corporation, joint-stock company or association evidenced by warrants is not subject to tax.

(d) The issue of certificates of stock in a new name, the only change in the corporation being in the name, is not subject to tax.

(e) The issue of voting trust certificates is not subject to tax.

(f) The issue, upon a merger of corporations, of certificates of stock of the same kind in substitution for the old certificates of stock is not subject to tax.

(g) The issue of certificates of stock of a smaller denomination in exchange for outstanding certificates, where there is no change in ownership or in the total amount of stock issued, is not subject to tax.

(h) The issue of the definitive certificates of stock in exchange for temporary or interim certificates upon which the tax has been paid is not subject to tax.

(i) The issue by a corporation of certificates of preferred stock in lieu of outstanding certificates of common stock, or vice versa, or the issue of certificates of preferred stock of one kind in lieu of certificates of preferred stock of another kind, without other consideration and without change in the amount of the authorized capital stock of the corporation, is not subject to tax. (This par. added by T. D. 3118, approved Jan. 15, 1921, amending T. D. 3014.)

[¶ 1358a] **“Original issue, whether on organization or reorganization” construed.**—The question is raised as to what constitutes an original issue of certificates of stock for the purpose of the stamp tax imposed upon the issue of capital stock.

Section 1100 under Title XI of the Revenue Act of 1918 provides:

That on and after April 1, 1919, there shall be levied, collected, and paid, for and in respect of the several * * * certificates of stock * * * mentioned and described in Schedule A of this title * * * the several taxes specified in such schedule. * * *

Subdivision 3 of Schedule A reads in part:

Capital stock, issued: On each original issue, whether on organization or reorganization, of certificates of stock * * * by any corporation, on each \$100 of face value or fraction thereof, 5 cents: Provided, That where a certificate is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof.

The M Corporation was incorporated in the year 1916 with an authorized capital stock of \$7,000,000 divided as follows: First preferred stock \$1,000,000, second preferred stock \$1,500,000, common stock \$4,500,000, the certificates issued showed the authorized capitalization, and the stamp tax upon the stock issued was duly paid in accordance with the provisions of the Emergency War Revenue Act of October 22, 1914. On March 10, 1920, the charter of the corporation was amended to reduce the authorized capital stock to \$5,250,000, divided as follows. Preferred stock \$1,500,000, common stock \$3,750,000, and new certificates were prepared showing the changed capitalization. At this time all of the first preferred stock had been retired, and there was outstanding of the original issue \$4,500,000, made up as follows: Second preferred stock \$1,500,000, common stock \$3,000,000. The outstanding second preferred stock was noncumulative and bore 6 per cent interest and had a par value of \$50 per share. The outstanding common stock also had a par value of \$50 per share. The new preferred stock was 8 per cent cumulative stock and had a par value of \$100 per share, and the new common stock was of a par value of \$100 per share. The new preferred stock was exchanged for the outstanding second preferred stock at the ratio of 1 share for 2, and the new common stock was exchanged for the old at the same ratio. It is contended that under the decision of the Circuit Court of Appeals, Second Circuit, in the case of *Edwards vs. Wabash Railway Company* (T. D. 3002) and T. D. 3014 no additional stamp tax was due by reason of this exchange.

In the *Wabash* case 5 per cent profit-sharing preferred stock A and common stock were exchanged for 5 per cent convertible preferred stock B in accordance with a provision contained in the original charter. All of the stock was par-value stock, the entire authorized issue of capital stock had been tax-paid at the time of the original issue, and the total authorized capitalization was not affected by the exchange. Upon these facts the court held:

In the case at bar when the plaintiff paid at the time of its organization the tax of 5 cents for each hundred dollars of face value of its total capital stock, including the A stock, the B stock, and the common stock, such payment was made once for all and constituted the payment of the tax on each original issue of the certificates of stock whenever and to whomsoever delivered. Whenever thereafter the plaintiff delivered the first certificates of the B stock it was not under obligation to pay again the tax on the B certificates. That had been already done. And when subsequently the

plaintiff exchanged the certificates of the B stock for certificates of the A stock and of the common stock it was not bound to pay again the tax on the certificates. That tax, too, had been already paid. The exchange of stock was an exchange of original certificates of one kind of stock for original certificates of two other kinds of stock, the tax on all of which had been previously paid.

In reaching its conclusion the court was largely influenced by the fact that in construing the language "on each original issue, whether on organization or reorganization" in the Spanish War Revenue Act, approved June 13, 1898 (30 Stat. L. 462), this Bureau had held (T. D. 20694) that no stamp tax liability was incurred upon the exchange of certificates of preferred stock for certificates of common stock and had adopted the same construction under the Emergency War Revenue Act of October 22, 1914 (T. D. 2051), as appears from the following statement:

It is a familiar and well-established rule that where a statute that has been construed by the courts has been re-enacted in the same or substantially the same terms the legislature is presumed to have been familiar with its construction and to have adopted it as a part of the law unless a different intention is indicated. And the same principle is applied to statutes and parts of statutes which have been re-enacted after they have been construed by the legislative or executive department of the Government.

It is important, therefore, to determine just what construction this Bureau has put upon the language in question in former rulings.

Under date of June 29, 1898, the Commissioner of Internal Revenue addressed a letter to the Collector, First District, Philadelphia, Pa. (T. D. 19607), which read in part as follows:

On the question of the construction of that part of Schedule A of the act of June 13, 1898, imposing stamp tax "on each original issue, whether on organization or reorganization, of certificates of stock," it is held that the meaning of the words "original issue" as herein used is limited and controlled by the words "whether on organization or reorganization"; and that, therefore, the only certificates of stock on which the tax of 5 cents "on each hundred dollars of face value or fraction thereof" is imposed by this act are those certificates issued on or after July 1, 1898, on the organization or reorganization of a company.

In the case of a corporation having, for instance, an authorized capital stock of \$1,000,000, of which it has issued only \$500,000 prior to July 1, 1898, and on or after that date finds it necessary to make one or more additional issues, under the authority possessed by it, each additional issue thus made is an "original issue" within the terms and meaning of the statute here under consideration, and the certificates of such issue are subject to the stamp tax.

Where any original certificate issued is presented by the holder to the company or corporation for the issuance of another certificate or certificates in lieu thereof, the certificate or certificates thereupon issued to take the place of the original certificate could not, under the language and limitation of the statute above cited, require any stamp as long as there is no sale, nor agreement to sell, nor memorandum of sale, nor transfer of any of these certificates issued in lieu of the original.

While, as stated, the words "original issue" are "limited and controlled by the words 'whether on organization or reorganization,'" thus confining a taxable issue to one made pursuant to an organization or reorganization, the illustration employed shows that the "original issue" is not otherwise "limited." The only question upon which this decision can be considered as authoritative are, first, that whenever stock which has not theretofore been issued is issued under the authorization contained in the charter of the corporation it constitutes an original issue, and, second, that the issue of certificates of the same kind of stock, either of the same or of a different denomination, in place of the certificates originally issued, does not constitute an "original issue." The question of the substitution of stock of one kind for stock of another, or of the issuance of stock based upon a different capitalization in lieu of outstanding stock was not before the bureau and was not considered.

T. D. 20694, approved February 7, 1899, contained the following:

(1) When common stock in a corporation is surrendered to the corporation and preferred stock is issued in place of the common stock thus surrendered, no other equivalent being passed therefor, are stamps required on either or both?

Answer. Neither the certificates representing the common stock nor the certificates representing the preferred stock issued in lieu of the common stock would be liable to taxation, providing there is no change of ownership.

At the time this decision was rendered, no-par-value stock was not known, and the only stock covered by the act was par or face value stock. The amount of the tax, therefore, was in nowise affected by the character of the stock issued, whether common or preferred. The amount of the tax would not have been different in the case supposed if preferred stock had originally been issued instead of common stock, and this undoubtedly was the moving cause for the conclusion reached. No question of any change in the total authorized capital stock of the corporation was involved in this decision, and it is clear that no such question was contemplated by this Bureau.

The phrase "whether on organization or reorganization" was clearly used in the statute not only for the purpose of limiting or confining the construction to be placed upon "original issue," but also and more particularly for the purpose of defining "original issue" and removing any possible doubt that stamp-tax liability as upon original issue was incurred not only upon an issue upon the original organization of a corporation, but also upon any subsequent issue, made pursuant to a reorganization of the same corporation. It is necessary, therefore, to consider what constitutes a "reorganization" in the case of a corporation. The term "reorganization" is not defined in Section 1 of the Revenue Act of 1918, and its varied use in the several sections of the act (Secs. 202, 330, 331, and Schedule A, subdivision 3) shows that Congress had no particular definition in mind but used the term with meanings varying with the connection and to denote various transactions, not only the reorganization of a corporation but even the transformation of a partnership into a corporation. An examination of the several uses of the term in the statute, therefore, will be of no assistance in this connection.

Mr. Cook, in his work on corporations (7th ed., vol. 4, Sec. 883), says:

A reorganization of a corporation is a business arrangement whereby the stock and bonds of the company are *readjusted as to amount, income, or priority*, or the property is sold to a new corporation for new stock and bonds, or the property is sold by foreclosure of a mortgage upon it, and the purchaser buys for himself and such of the old stockholders and bondholders as he associates with him. * * * [Italics are mine.]

Mr. Thompson, in his work on corporations (2d ed., vol. 5, Sec. 5980), says:

Reorganization simply means the act or process of organizing again or anew. In the law of corporations it means only what the term itself indicates, that a corporation has by some process organized anew; and yet it implies that some of the features of the old corporation are retained. The term is applied indifferently to the various proceedings by which a change or renewal of the corporation is accomplished, as well as to the proceedings by which *an existing corporation is continued under a different organization*, though it may or may not be the creation of a new corporation. * * * A reorganization is usually effected by the dissolution of one and the organization of a new corporation to take the property and franchise of the first and to continue its business. However, as suggested, the reorganization *may continue an existing corporation*, without any dissolution, under the *same* or a different name, and *without affecting the identity of the corporation*. [Italics are mine.]

In Fletcher's Cyclopedia of the Law of Private Corporations (vol. 7) it is said (Sec. 4834):

The term "reorganization" has no very definite meaning in the law of corporations, but is applied indifferently to various proceedings and transactions by which succession of corporations is brought about, and also to proceedings by which *existing corporations are continued under a different organization* without the creator

of a new corporation. Etymologically, the term signifies nothing more than "the act or process of organizing anew." The effect of the reorganization in any particular case must depend upon the intention of the parties and the terms of the statute under which it is effected. Generally, a reorganization is effected by the dissolution of an existing corporation and the organization of an entirely new and distinct corporation to take its property and franchises and continue its business. This, however, *is not necessarily the effect of a reorganization*. The terms of the statute and the intention of the legislature and of the parties may be merely to *continue the existing corporation*, without any dissolution, under the *same* or a different name and with the *same* or different powers, and under the *same* or a different management. [Italics are mine.]

In the case of *Senn et al. vs. Levy*, decided by the Kentucky Court of Appeals June 14, 1901 (63 S. W. 776), where the question of whether an amendment of its charter by a corporation constituted a reorganization under the provisions of the new State constitution was under consideration, the courts said (p. 778):

And there is *no difference in principle* between a reorganization and an amendment which accomplishes the same purpose. *In both a new corporation is created*, which is subject to laws in force at the date of its birth. [Italics are mine.]

In the case of *Ecker vs. Kentucky Refining Co.*, 138 S. W. 264, a corporation having \$1,000,000 common stock and \$600,000 preferred stock reduced its capitalization to \$200,000 common and \$200,000 preferred. The proceeding was treated by the court as a reorganization and the correctness of this view was never questioned. Although the corporation was in financial difficulties at the time it is not believed that this fact was a decisive one in determining the nature of the transaction.

In paragraph (c) of Article 33, Regulations 40 (revised), the Bureau defined "reorganization" as follows [¶ 1389]:

The term "reorganization" means a business arrangement whereby the stock and bonds of a corporation are readjusted as to amount, income or priority, or the issue of one kind of stock is substituted for the issue of another kind, or the property is sold to a new corporation for new stock and bonds, or is sold by foreclosure of a mortgage upon it to a purchaser who buys for himself and his associates, and includes the various proceedings and transactions by which succession of corporations is brought about, and also the proceedings by which existing corporations are continued under a different organization without the creation of a new corporation.

Under the decision of the Circuit Court of Appeals in the *Wabash* case it is recognized that the definition of reorganization as including the case where "the issue of one kind of stock is substituted for the issue of another kind" is not generally tenable, and it is believed that this definition should be amended by omitting the phrase in question. [For Article amended in accordance with this opinion, See ¶ 1389.] In other respects the definition appears to be well sustained by reputable authority, and not inconsistent with any previous decision of the department or with the holding in the *Wabash* case.

Paragraph (i) which was added to Article 5 of Regulations 40 (revised by T. D. 3014), was based directly upon the decision in the *Wabash* case and was not intended to extend the rule there laid down, and it is not believed that there is anything in the prior rulings of this department to require that the doctrine of that case should be extended to any other case than the one there considered—that is, to the case where par-value stock of one kind is exchanged for par-value stock of another kind without other change in the capitalization of the corporation. [For paragraph (i) as further amended see ¶ 1358.]

In the instant case the total authorized capitalization of the corporation was changed and each share of the new stock, whether common or preferred, represented a fractional interest in a different capital stock. A new series of

certificates was issued showing the change in the authorized capitalization and substituted for the outstanding certificates of the former corporation. The new preferred stock was cumulative convertible stock bearing 8 per cent interest; the stock for which it was substituted was non-cumulative convertible stock bearing 6 per cent interest; and the common stock in the reorganized corporation was issued subject to these different charges. Under the circumstances, it is clear that the new stock issued was stock which had never been before issued and was under an authorization not theretofore existing, but which arose out of the amendment of charter.

It is, therefore, believed that the issue of stock in question constituted an original issue on reorganization within the meaning of subdivision 3, Schedule A, Title XI, of the Revenue Act of 1918, and is subject to the tax imposed by that subdivision, and it is so held.

(Opinion of the Solicitor of Internal Revenue, by Carl A. Mapes, for the Solicitor. [Sol. Op. 71: 1-21.])

[¶ 1358b] Taxable and tax-free issues upon a merger of corporation.—

It appears that paragraph (f) of Article 5, which is somewhat uncertain, requires construction in order to be reconciled with paragraph (j) of Article 4. The distinction with respect thereto is clearly drawn in Law Opinion 440 and Solicitor's Opinion 4, Income Tax Bulletin 22-20. In case of a consolidation of corporations all stock issued by the consolidated or newly created corporation is subject to tax under paragraph (i) of Article 4, and no other provision in the Regulations tends to relieve of the tax by reason of substitution or exchange for the stock of the consolidating corporations.

It was held in Law Opinion 440, under a provision of the Revenue Act of 1917, substantially the same as the pertinent provision in the Revenue Act of 1918, that stock issued by the merging corporation (continuing corporation) in exchange for stock of the merged corporation is subject to tax as an original issue, saying: "It is an original issue of stock that was never issued before. It is immaterial that part of the new stock of one corporation is issued in exchange for old stock of the other corporation." Such rule is considered sound. It is strengthened by the direct language in paragraph (j) of Article 4, *supra*, and by the result reached in case of consolidation of corporations and issue of stock, whether or not in exchange, mentioned *supra*. Paragraph (f) of Article 5, *supra*, is not necessarily inconsistent therewith.

It is accordingly concluded that paragraph (f) of Article 5 of Regulations 40 (revised) exempts stock of the merging corporation (continuing corporation) from the original issue tax when exchanged for the old certificates of stock of such corporation, but not when exchanged for the old certificates of stock of the merged corporation or corporations. (Office Decision No. 83: Ruling No. 198, March, 1921.)

[¶ 1359] Art. 6. Stamp tax acts.—(a) All certificates of stock issued between December 1, 1914, and September 8, 1916, are subject to tax under the Emergency Revenue Act of October 22, 1914; those issued between December 1, 1917, and April 1, 1919, are subject to tax under the Revenue Act of 1917; and certificates of stock, or of profits, or of interest in property or accumulations issued by any corporation, joint-stock company, or association on or after April 1, 1919, are subject to tax under the Revenue Act of 1918.

(b) The rate of taxation under each of these acts is the same.

(c) There was no stamp tax upon issues of certificates of stock between September 8, 1916, and December 1, 1917.

[¶ 1360] Art. 7. Documentary stamps used.—Ordinary documentary stamps shall be used in payment of the tax imposed upon the issue of stock.

[¶ 1361] Art. 8. **Stamps to be attached to stock book.**—The stamps representing the tax imposed by this subdivision must be attached to the stock book and not to the certificates when issued.

SALES AND TRANSFERS OF STOCK.

[¶ 1362] **Schedule A4. Capital stock, sales or transfers:** On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each \$100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess of \$100 per share, in which case the tax shall be 2 cents on each \$100 of actual value or fraction thereof: Provided, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited: Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That in case of sale where the evidence of transfer is shown only by the books of the corporation the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both.

[¶ 1363] Art. 9. **When tax accrues.**—The stamp tax on sales or transfers of stock accrues at the time of making the sale or agreement to sell or memorandum of sale, or delivery of, or transfer of the legal title to shares, or certificates of stock, or of profits, or of interest in property or accumulations in any corporation, joint-stock company, or association, or of the right to subscribe for or to receive such shares or certificates, regardless of the time or manner of the delivery of the certificate or agreement or memorandum of sale.

Note: By letter of March 25, 1920, the deputy Commissioner advised an inquirer that the tax imposed by Sub. 3 of Schedule A upon the original issue of stock, applies when the stock is subscribed for and the subscription is accepted regardless of the time of delivery of the certificate. The direction by the subscriber to deliver such stock to other parties involves the transfer of the right to receive stock and is subject to stamp tax under the provisions of Schedule A-4.

[¶ 1364] Art. 10 (as amended by T. D. 3114). **Rate of taxation.**—(a) In the case of stock having a par or face value, the amount of the tax is 2 cents on each \$100 or fraction thereof of the total par or face value of the shares or certificates involved in the sale or agreement to sell, whether such aggregate par or face value is greater or less than \$100; e. g., where the total par or face of the shares involved in the transaction is \$100 or less, the tax is 2 cents; where such value is in excess of \$100, the tax is 2 cents on each \$100 or fraction thereof.

(b) In the case of shares of stock without par or face value, the tax is 2 cents on the transfer or sale of, or agreement to sell, each share, unless the actual value of such share is in excess of \$100, in which case the tax is 2 cents on each \$100 or fraction thereof; e. g., where the transaction is for ten shares, each having an actual value of \$100 or less, the tax is 2 cents on each share or 20 cents on the ten shares; if the actual value of each share is \$175, the tax is 2 cents on the \$100 and 2 cents on the \$75, being a fraction of \$100, making a total tax of 4 cents on each share or 40 cents on ten shares. (T. D. 3114, approved Jan. 10, 1921.)

[¶ 1365] Art. 11. **Computation of the tax.**—(a) In the case of stock having a par or face value, the amount of the tax is computed upon the total par or face value of the shares and not upon the amount that may have been paid in on such stock; e. g., where stock of the par value of \$100 is sold, for which only \$25 is paid, the tax is reckoned upon the par value of \$100 and not upon the \$25 paid.

(b) Where one certificate represents several shares (however large the number of shares) on the transfer of such certificate the tax is computed upon its face value and not on the face value of each separate share of stock, or of profits, or of interest in property or accumulations; e. g., on the transfer of one certificate representing 500 shares, par value \$5, the face value of the certificate being \$2,500, the stamp tax is 50 cents.

[¶ 1366] Art. 12. **Sales and transfers subject to tax.**—(a) The sale, or transfer, or change of ownership, of certificates of stock, or of profits, or of interest in property or accumulations in corporations, joint-stock companies, or associations, is subject to tax.

(b) The sale or transfer of shares of stock, whether or not represented by certificates, is subject to tax.

(c) The transfer of stock to or by trustees is subject to tax.

(d) The transfer of voting trust certificates is subject to tax.

(e) The sale or transfer of temporary or interim certificates of stock is subject to tax.

(f) The sale or transfer of certificates issued by trustees, where such trustees are appointed for a definite period and the declaration of trust provides that the beneficiaries (termed "shareholders") shall hold annual meetings for the election of new trustees to fill the vacancies thus occurring, the

beneficiaries thus reserving to themselves control over the persons delegated to conduct their affairs and a voice in the business, is subject to tax.

(g) The transfer of the interest of a subscriber for stock, however such interest may be evidenced or conditioned upon further payments, is subject to tax.

(h) The transfer of the right to subscribe for stock in any corporation, joint-stock company, or association, whether or not evidenced by warrants, is subject to tax.

(i) The transfer of the right to receive a stock dividend already declared is subject to tax.

(j) The transfer or surrender of stock to a corporation, for the purposes of the corporation, whether or not it intends eventually to sell such stock, is subject to tax.

(k) The surrender of common stock in exchange for preferred stock (or vice versa), without change of ownership, is subject to tax. (This paragraph (k) is stricken out by T. D. 3014, dated May 3, 1920.)

(l) The transfer of shares or certificates made by a person loaning stock to another borrowing the stock to effect a sale, and also the transfer of shares or certificates from the borrower returning them to the lender in fulfillment of the obligation to buy in and return stock are both subject to tax.

(m) The sale of or agreement to sell shares of stock made by a broker, directly or indirectly, for himself, is subject to tax.

(n) The sale or transfer of stock by a broker at a price different from that at which he accounts to his selling customer is subject to tax.

(o) The transfer of stock in pursuance of a gift, bequest, or conveyance by trustees is subject to tax.

(p) The transfer of stock from parties occupying fiduciary relations to those for whom they hold stock is subject to tax.

(q) The transfer of certificates of stock by an administrator or executor to the legatee or distributee is subject to tax.

(r) The transfer of stock on the books of a domestic corporation, regardless of where the sale is made or the stock certificates delivered, is subject to tax.

(s) The sale, transfer, or delivery, within the territorial jurisdiction of the United States, of shares of stock of a foreign corporation is subject to tax.

(t) The transfer of stock of a corporation to be merged to the merging corporation prior to the actual merging and as a condition precedent to the merger is subject to tax.

Note: For ruling on stamp tax liability on account of original issue and transfer of stock and conveyance of real property incident to the reorganization of a corporation under the laws of another state, see paragraph 1357.

[¶ 1367] Art. 13. **Sales and transfers not subject to tax.**—(a) The transfer of stock pursuant to a sale, where the memorandum of sale has been duly stamped, is not subject to tax.

(b) The sale or transfer of enemy-owned shares of stock in American corporations to or by the Alien Property Custodian is not subject to tax.

(c) The surrender of certificates in exchange for other certificates representing the same or new stock, provided they are issued to the same holders, is not subject to tax.

(d) The surrender of the stock of the consolidating corporation in exchange for stock in the consolidated corporation, in the case of consolidation of two or more corporations, is not subject to tax. (Read paragraphs 1356 and 1357.)

(e) The transfer of the stock of a merged corporation in exchange for stock of the merging corporation at the time and as a part of a statutory merger is not subject to tax, nor is the substitution of new certificates for the certificates representing the old stock of the merging corporation.

(f) The surrender of stock for extinguishment or in exchange for new certificates to be issued without change of ownership is not subject to tax.

(g) The transfer of certificates of stock from the decedent to the administrator or executor of the estate is not subject to tax.

(h) The sale or transfer of certificates issued by trustees, where such trustees are legally appointed for the entire period of the trust and the beneficiaries retain no substantial control over the affairs of the trust, but delegate their proprietary functions to others, any further control on their part depending upon contingencies, their rights being limited to filling vacancies caused by death, resignation, or disability, is not subject to tax.

(i) An agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, is not subject to tax, nor is the transfer or delivery for such purpose of the certificates so deposited, or the retransfer of such certificates by the lender to the borrower of the money, subject to tax: Provided, That any transfer of such certificates by the lender of such money for any other purpose than the borrowing of money shall be subject to tax: Provided further, That in each case the person making a transfer of such certificates as collateral security shall make and sign a statement of the facts and attach it to the certificate.

(j) The transfer or delivery of certificates to a clearing house for the sole purpose of clearing or adjusting accounts, where no beneficial interest is vested in such clearing house and there has been no change of title or interest, is not subject to tax.

(k) The transfer of a certificate of stock from the owner thereof to a broker, solely for the purpose of enabling such broker to make a sale thereof for the owner, is not subject to tax, provided the broker shall in every case at the time of such transfer to him make and sign a certificate stating that he has no ownership in such stock and that the transfer to him was made solely to enable him to sell the stock for the owner. Such certificate shall in every case be attached to the certificate of stock and presented to the transfer agent at the time such certificate of stock is surrendered for transfer and shall be preserved, together with the old certificate, by such transfer agent, for the inspection of the revenue officer.

(l) The transfer of a certificate of stock by a broker to his customer for whom and upon whose order he has purchased such stock, where the tax has been paid upon the transfer of the stock to the broker, is not subject to tax, provided that the broker shall in every case, at the time of such transfer from him, make and sign a certificate stating that the transfer from the broker to his customer is made solely to complete the purchase made by such broker for such customer. Such certificate in every case shall be attached to the certificate of stock and presented to the transfer agent at the time such certificate of stock is surrendered for transfer, and shall be preserved, together with the old certificate, by such transfer agent for the inspection of the revenue officer.

(m) The certificates required by the two preceding paragraphs shall be in the following form:

(1) (In the case of a transfer to a broker)—

We hereby certify that we have no ownership or interest in * * * shares of the stock above transferred, the transfer by the owner to us being merely for the purpose of sale.

.....
(Broker sign here.)

(2) (In the case of a transfer by a broker)—

We hereby certify that the transfer of * * * of the within shares to the names indicated by the star is made solely to complete the purchase made by us for our customer, and we have no ownership or interest therein.

.....
(Broker sign here.)

(n) No broker who has filed a certificate on the form given in paragraph (1) shall file a certificate on the form given in paragraph (2) with relation to the same transfer of shares of stock.

(o) A "call" is an agreement to sell and is taxable; but a transfer of a certificate of stock pursuant to the "call" is not taxable, being only a fulfillment of the original agreement. The seller shall execute and attach to the certificate of stock his certificate, which shall be accepted by the transfer agent and shall be preserved by him for inspection of the revenue officer. The certificate here prescribed shall be in the following form:

We hereby certify that the transfer of shares of the within stock to has been made pursuant to a "call," and that the federal stock transfer stamps for the transaction are affixed to such "call," which is in our possession.

(Last subdivision of this article on "calls," added by T. D. 3093.)

[¶ 1368] Art. 14. **Inconsistent by-laws, rules, or customs of exchange.**—

No provisions, by-laws, rules or customs of any exchange or similar institution inconsistent with any requirement or provision of the Revenue Act of 1918 or any regulations made thereunder, nor any collateral additional agreement or understanding, either verbal or written, respecting the subject matter of sales or transfers of certificates, or the settlement or fulfillment thereof, which are inconsistent or in conflict with any requirement of said act or regulations shall exempt any person from the payment of the tax imposed.

[¶ 1369] Art. 15. **Memoranda of sales.**—Every person who makes an agreement to sell or transfer title to shares of stock by delivery of certificates assigned in blank, shall as a part of such transaction promptly make and deliver to the buyer a bill or memorandum of such sale or agreement to sell, duly signed by the seller or his agent, to which the requisite stamps shall be affixed and canceled, which bill or memorandum shall show the date of the transaction, the names of the seller and buyer and the name and number of shares of stock, and the price per share and the tax paid thereon, and in the case of a transaction made on an exchange shall bear a number upon the face thereof and have printed and written in ink thereon the words "Subject to the Revenue Act of 1918 and regulations made in accordance therewith." No more than one such bill or memorandum made by the seller on any given date shall bear the same number: Provided, however, That no single transaction or purchase or sale that is made upon an exchange by one member to another member shall require to be evidenced by more than one stamped memorandum of sale or agreement to sell.

[¶ 1370] Art. 16. **Records of sales or transfers of stock.**—(a) All persons who are wholly or partly engaged in the business of buying, selling or transferring shares of stock, whether at public or private sale, or whether or not they are members of an exchange, including persons engaged in transactions known as "matched," or "on-order," or "pass-outs," or "give-ups," or settled directly between the seller and buyer, or cleared or adjusted through

a clearing house or otherwise, or engaged in accepting and procuring the transmission of orders for purchase or sale of shares of stock shall keep a record showing:

- (1) Date of transaction.
- (2) Line number (if at an exchange).
- (3) Name of broker or salesman who executed the order.
- (4) Name of party to whom sold, or from whom bought.
- (5) Number of shares dealt in.
- (6) Name or description of stock.
- (7) Price of stock, if without face or par value.
- (8) Amount (or total market value) of stock.
- (9) Face or par value of stock per share.
- (10) Tax paid on shares having face or par value.
- (11) Tax paid on shares without face or par value.
- (12) State tax paid, if any. (Optional.)
- (13) Total amount to ledger. (Optional.)
- (14) Folio number. (Optional.)
- (15) Name of customer for whom sold or transferred, or for whom bought or transferred.
- (16) Number of shares loaned or borrowed.
- (17) Number of borrowed or loaned shares returned.
- (18) Method of settlement or adjustment.

(b) Persons keeping such records may incorporate therein additional columns that will be of use to them, such columns to be placed so as not to interfere with the columns and headings hereby prescribed. These records must be in book form, and all entries therein must be legibly written in ink and the records kept for a period of at least two years. Such record forms will not be supplied by the department.

(c) The form of record required shall be as follows: (See page 11.)

(d) Provided, however, That brokers known as strictly "floor brokers," or "two dollar men," or "room traders," in lieu of the foregoing record, whether their transactions are settled directly between seller and buyer or by "matched," "on-order," "pass-out," or "scratch sale," or "give-up," or any other kind of sale or purchase, or are cleared through a clearing house or otherwise, shall keep a record showing:

- (1) The date of the transaction.
- (2) The name of the seller.
- (3) The name of the purchaser.
- (4) The name of the stock.
- (5) The number of shares.
- (6) The par or face value of the shares.
- (7) The price, if the stock has no par value.
- (8) Whether the transaction is "matched," "on-order," "pass-out," "scratch sale," or "give-up."
- (9) Name of person to whom "given-up."

(e) Provided further, That persons engaged in accepting and procuring the transmission of orders for the purchase or sale of shares of stock to be executed at a brokerage office or an exchange, board of trade, or similar place, shall keep a record showing:

- (1) Date of acceptance and transmission of order.
- (2) Name of person from whom accepted.
- (3) Name and address of person to whom transmitted.
- (4) Name of stock.
- (5) Par value of stock.
- (6) Number of shares.

Form A.

Address _____

(Street and number.) _____ (City.) _____ (State.) _____

[Name of person (firm or individual broker) keeping the record.] _____

***CLEARING-HOUSE TRANSACTIONS.** [N. B.— Clearing-house transactions and ex-clearing house transactions must be recorded separately, either in a separate record or blotter with the proper headings, etc., if the volume of the business so warrant, or else distinctly segregated on the same page or another section of the record in the form hereby prescribed.]

***EX-CLEARING-HOUSE TRANSACTIONS.** _____

* Erase line not applicable.

SALES (TO DELIVER) (a). _____

Date, b	Line No. (if at an exchange), (c)	Name of broker or salesman who executed order.	To whom sold, (d)	Number of shares.	Name or description of stock.	Price of stock if there is no face or par value.	Amount (or total market value).	Face (or par) value of stock per share.	Tax paid on shares having face (or par) value, (e)	Tax paid on shares without face (or par) value, (f)	State tax (if any), (g, h)	Total amount to ledger, (h)	Folio No. (i)	Name of customer (for whom sold or transferred), (i)	Loaned shares, (f)	Borrowed shares returned, (k)	Method of settlement or adjustment. In case of recording clearing-house transactions it is permissible to state: "All transactions entered hereon are settled through clearing house except balances listed below," or in case of ex-clearing house deliveries by (or to) us "All other settlements, whether by "offset," "matched," "on order," "pass out," "scratch sale," "give up," or otherwise, must be entered opposite each transaction.
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DIRECTIONS.—All entries must be legibly written in ink and this record or "Blotter" or "Purchase and Sales book" must be preserved for a period of at least two (2) years. The reverse side of this sheet is for "Purchases (to receive)," therefore make the captions and headings on the "Purchase" side to conform, viz.:

- (a) The words "purchases (to receive)" in lieu of "Sales (to deliver)";
- (b) The date may be printed or stamped at the top of the page or section dividing each day's business.
- (c) Each entry in this record shall have a number identical with the line number identifying the transaction with the memorandum of sale, transfer, or delivery mentioned in article 15 of Regulations No. 40, Revised.

Fifty lines to the page may be used.

The numbers in this column on the "Sales" side may be printed from 51 to 100, inclusive, and on the "Purchase" side from 1 to 50 inclusive.

- (d) The words "from whom bought," in lieu of "to whom sold,"
- (e) (f) (g) The filling in of these three columns on the "Purchase" side is optional.
- (h) The incorporation of these and additional columns, such as "Interest," "Commissions," "State tax," etc., is optional with the person keeping the record.
- (i) The words "for whom transferred," in lieu of the words "for whom sold or transferred."
- (j) The words "borrowed" in lieu of the word "loaned."
- (k) The words "loaned shares returned" in lieu of the words "borrowed shares returned."

- (7) Whether purchase or sale.
- (8) Price.
- (9) Whether order was executed at an exchange; and, if so, what exchange.
- (10) Date of execution of order.

[¶ 1371] Art. 17 (as amended by T. D. 3103). **Returns by persons making sales.**—(a) All persons who are wholly or partly engaged in the business of buying, selling, or transferring shares of stock, whether such sales, purchases, or transfers shall be made, cleared, settled, or adjusted through a clearing house, or otherwise, shall on or before the fifteenth day of each month, and at any other time designated by the Commissioner, render under oath a true return of all such sales and purchases to said Commissioner for the preceding month or for any other period designated by the Commissioner, containing in detail the following data and information:

- (1) The month for which the return is made.
- (2) The name and address of the person, partnership, corporation, or association making the return.
- (3) The number of shares sold, loaned and borrowed, returned and tax paid as follows:
 - (a) Par value shares through clearing house.
 - (b) Par value shares ex-clearing, curb, over the counter.
 - (c) No par value shares, market value \$100.00 or less through clearing house.
 - (d) No par value shares, market value \$100.00 or less ex-clearing house, curb, over the counter.
 - (e) No par value shares, market value over \$100.00 through clearing house.
 - (f) Market value no par value shares, market value over \$100.00 through clearing house.
 - (g) No par value shares, market value over \$100.00 ex-clearing house, curb, over the counter.
 - (h) Market value no par value shares, market value over \$100.00 ex-clearing house, curb, over the counter.
 - (i) Transfers, Calls, Rights, when as and if issued, contracts, and miscellaneous.
- (4) Number of shares cross trades.
- (5) The amount of tax paid.
- (6) The amount of stamps on hand on the first day of the month, or other period.
- (7) The amount of stamps purchased during the month, or other period.
- (8) The amount of stamps on hand on the last day of the month for which return is being made.

(b) Provided, That brokers known strictly as "floor brokers," or "two dollar men," or "traders," in lieu of the foregoing return shall render a return only as to such transactions as were not "given-up" to or cleared through some other broker, including direct settlements, "pass-outs," or "scratched sales";

(c) Provided, further, That in the event any broker who has not closed business shall make no sales or purchase of stock during any one month he shall file with the Commissioner a statement to that effect in lieu of a return.

[¶ 1372] Art. 18. **Returns by clearing houses.**—(a) If any person, who negotiates sales or transfers of stock on a stock exchange, shall appoint in writing the clearing house for the exchange upon which such sales or transfers are made his agent for the purposes hereinafter indicated, and shall make to such clearing house a written return, statement, or sheet, on each business day, containing a full disclosure of all such transactions, both clearable and non-clearable, of the preceding day, in shares of stock that are listed or permitted to be dealt in by such member on such exchange, and also showing which, if any, of such stocks are loaned or borrowed or returned, then in that event such return, statement, or sheet, delivered to the clearing house, shall be deemed to be the bill, or memorandum of sale, or agreement to sell, required under subdivision 4, Schedule A, Revenue Act of 1918, and such clearing house is hereby authorized to affix to such return, statement, or sheet the amount of stamps required for each sale or agreement to sell or memorandum of sale or delivery or transfer of the stock indicated thereon, and to cancel the stamp so affixed.

(b) The affixing and cancellation of such stamps by the clearing house shall be held to be the act of the person making such sale or agreement to sell, or memorandum of sale, or delivery or transfer of such stock; or if such person and clearing house so elect, such person shall affix and cancel such stamps before delivering such clearing house sheets or memoranda of sales to the clearing house, but such clearing house shall not accept such clearing house sheet or memoranda unless stamps for all transfer tax required to be affixed are attached thereto and properly canceled.

(c) The returns, statements, or sheets made to the clearing house shall in respect of each sale show the date thereof, the name of the seller, the name of the buyer, the amount of the sale, and the name of the stock, or certificates, or other thing, traded in, but a return for more than one sale may be made

upon the same return, statement, or sheet; and no settlement of differences or other dealings between members shall be permitted that will interfere with the full disclosure of the whole transaction.

(d) Said clearing house shall preserve the returns, statements, or sheets so made and stamped for at least two years.

(e) Such return, statement, or sheet to the clearing house shall not relieve the seller from making and delivering to the buyer the bill or memorandum required by article 15 of these regulations.

(f) Wherever any clearing house carries upon its sheets or records information or reports of transactions showing the transfer by one of its members of an account of a customer without change of ownership of the securities of the customer, there shall be kept by the members of such clearing house or body concerned in such transaction a record showing the particulars of such transaction.

[§ 1373] **Art. 19. Stock transfer stamps.**—(a) Ordinary documentary stamps with the words "Stock transfer" overprinted thereon, known as "Stock transfer stamps," shall be affixed to all sales or agreements to sell, or memoranda of sales, or deliveries of or transfers of legal title to shares or certificates of stock or of profits, or of interest in property or accumulations of a corporation, joint-stock company, or association, and all "warrants," rights, and other securities, made at exchanges or similar places.

(b) Ordinary documentary stamps may be affixed to sales, agreements to sell, or memoranda of sales not made at exchanges or similar places.

SALE OF PRODUCTS OR MERCHANDISE AT OR UNDER THE RULES OR USAGES OF EXCHANGES FOR FUTURE DELIVERY.

[§ 1374] **Schedule A5. Produce, sales of, on exchange:** Upon each sale, agreement of sale, or agreement to sell (not including so-called transferred or scratch sales), any products or merchandise at, or under the rules or usages of, any exchange, or board of trade, or other similar place, for future delivery, for each \$100 in value of the merchandise covered by said sale or agreement of sale or agreement to sell, 2 cents, and for each additional \$100 or fractional part thereof in excess of \$100, 2 cents: Provided, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale: Provided further, That sellers of commodities described herein, having paid the tax provided by this subdivision, may transfer such contracts to a clearing-house corporation or association, and such transfer shall not be deemed to be a sale, or agreement of sale, or an agreement to sell within the provisions of this act, provided that such transfer shall not vest any beneficial interest in such clearing-house association, but shall be made for the sole purpose of enabling such clearing-house association to adjust and balance the accounts of the members of such clearing-house association on their several contracts. Every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale or agreement of sale, or agreement to sell, or who, in pursuance of any such sale, agreement of sale, or agreement to sell, delivers any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who delivers such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000 or be imprisoned not more than six months, or both.

No bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell, in case of cash sales of products or merchandise for immediate or prompt delivery which in good faith are actually intended to be delivered shall be subject to this tax.

[¶ 1375] Art. 20. When tax accrues.—The stamp tax on sales of products or merchandise for future delivery accrues immediately upon the making of a sale, agreement of sale, or agreement to sell, and is in no wise dependent upon the manner of delivery of the product.

[¶ 1376] Art. 21. Rate of taxation.—The rate of taxation is 2 cents on each \$100 or fraction thereof the value of the products or merchandise involved in the sale, agreement of sale, or agreement to sell.

[¶ 1377] Art. 22. Transactions subject to tax.—All sales or agreements to sell (except as herein otherwise provided) of products or merchandise at or under the rules and usages of an exchange for future delivery are subject to the payment of tax, and every sale or agreement not evidenced by a memorandum or contract expressly requiring immediate or prompt delivery shall be deemed to be for future delivery. In cases in which the commissioner is not satisfied from the evidence that the transaction is in good faith intended to be followed by immediate or prompt delivery, the seller is required to pay the tax as on a sale for future delivery.

[¶ 1378] Art. 23. Transactions not subject to tax.—(a) So-called “transfer or scratch sales” or “pass-outs” are not subject to the tax: Provided, That the purchase and sale are made at the same exchange, on the same day, at the same price, and for the account of the same person.

(b) Cash sales of products or merchandise for immediate or prompt delivery, which are in good faith actually intended for “immediate or prompt delivery,” as defined in Article 33 (3) (d) of these regulations, are not subject to tax.

(c) Transfers of sales, agreements of sale, or agreements to sell, to a clearing house by a person selling products or merchandise on exchange for future delivery who have paid the tax provided by law, are not subject to tax, provided such transfers do not vest any beneficial interest in the clearing house and are made for the sole purpose of enabling the clearing house to adjust and balance the accounts of members of the exchange and of such clearing house on their contracts.

[¶ 1379] Art. 24. Inconsistent by-laws, rules, or customs of exchanges.—No provisions, by-laws, rules, or customs of any exchange, board of trade, or similar institution or place of business which are inconsistent or in conflict with any requirement or provision of the Revenue Act of 1918, or any regulations made thereunder, nor any collateral, or additional agreement, verbal or written, respecting the subject matter of such contract or the settlement or fulfillment thereof which is inconsistent or in conflict with any requirement of said act or regulations, shall exempt any person from the payment of tax imposed by subdivision 5 of said act.

[¶ 1380] Art. 25. Memoranda of sales.—(a) Every person who makes sales, or agreements of sale, or agreements to sell, any products or merchandise at or under the rules or usages of any exchange, board of trade, or similar place, for future delivery, shall deliver to the buyer bill, memorandum, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp in value equal to the amount of the tax on such sale.

(b) Such bill, memorandum, or other evidence duly stamped shall be kept by the buyer for two years, unless otherwise prescribed in these regulations.

(c) No single sale or agreement of sale, or agreement to sell, made upon an exchange by one member for another need be evidenced by more than one stamped bill, memorandum, or agreement.

[¶ 1381] Art. 26. **Clearing house as agent.**—(a) If any person who makes sales, agreements of sale, or agreements to sell any products or merchandise at or under the rules or usages of any exchange, board of trade, or similar place, for future delivery, shall in writing appoint the clearing house for the exchange upon which such sales are made, his agent for the purposes hereinafter named, such clearing house being approved by the commissioner, and shall make a written return or sheet of each such sale to such clearing house in accordance with these regulations, such return or sheet shall be deemed to be the bill, memorandum, or other evidence required by these regulations to be delivered by the seller to the buyer, and the clearing house is hereby authorized to affix to such return or sheet the amount of the stamps required for each sale, agreement of sale, or agreement to sell as indicated thereon and to cancel the stamps so affixed.

(b) The affixing and canceling of such stamps by the clearing house shall be held to be the act of the person making such contract of sale.

(c) If the person making such sale and the clearing house so elect, the seller may affix the stamps to the clearing house return or sheet and cancel the same before or at the time of delivery to the clearing house. The clearing house shall in no event accept such bill, memorandum of sale, or clearing house return or sheet unless stamps for all the tax required to be paid thereon are attached and properly canceled.

(d) The returns or sheets of sales so made to the clearing house shall in respect of each sale, set forth the date, the name of the seller, the name of the purchaser, the amount of the sale, the matter or things to which it refers, and the tax paid thereon, but a return for more than one sale may be made on the same paper or sheet.

(e) The clearing house shall preserve for a period of not less than two years, each bill, memorandum or return, or sheet made to it by such person.

(f) Every clearing house shall include in its monthly return to the commissioner a statement of the amount of stamps so affixed and canceled on the returns or sheets of each person.

(g) The making of such return by the clearing house shall not relieve the person making such sale, or agreement of sale, or agreement to sell, from making the monthly return of his transactions required by Art. 29 of these regulations.

[¶ 1382] Art. 27. **Records to be kept by buyers and sellers.**—(a) All persons who make sales or agreements of sale of, or agreements to sell (including so-called "transferred or scratch" sales, "pass outs," "pair offs," "matched trades," or "give ups") any products or merchandise at, or under the rules or usages of, any exchange for future delivery, or are engaged in the business of accepting and transmitting orders for the purchase of such products or merchandise to be executed at, or under the rules or usages of any exchange for future delivery, shall keep a record showing:

- (1) Date of contract.
- (2) Name of person executing contract (floor broker).
- (3) To whom sold or from whom bought (name and address).
- (4) Whether transaction is a purchase or sale.
- (5) Quantity of product or merchandise involved, whether in tons, pounds, bales, bushels, bags, mats, barrels, gallons, or whatever other unit of weight or measure is used.
- (6) Name of product or merchandise, including (if not a basis grade) grade, type, sample, or description.
- (7) Whether contract is a "basis-grade," "deferred-acceptance," or whatever kind of contract.

(8) Price specified per ton, pound, bale, bushel, bag, mat, barrel, gallon, or whatever other unit of weight or measure is used.

(9) Tax paid.

(10) Customer (name and address).

(11) Origin of order (whether domestic or foreign).

(12) Month or time specified in contract for delivery.

(13) Date of settlement.

(14) Method of settlement or adjustment.

(b) Provided, That "floor brokers," or "two-dollar men," or "room traders," in lieu of the foregoing record, shall keep a record showing:

(1) Date of transaction.

(2) Name of person who executed order, if other than floor broker.

(3) Name of seller.

(4) Name of buyer.

(5) Quantity of product or merchandise involved in the transaction.

(6) Name of product or merchandise, including (if not a basis-grade contract) grade, type, sample, or description.

(7) Whether the contract is a basis-grade contract.

(8) Price.

(9) Time specified in contract for delivery.

(10) Name of persons to whom "given up," "paired off," "transferred or scratched," or "passed out."

(c) Any other transactions than those specified in this proviso made by "floor brokers," "two-dollar men," or "room traders," shall be kept on the first form prescribed in this article.

(d) Persons who use either of such forms may incorporate additional columns which may be of use to them, such columns to be so placed as not to interfere with the columns and headings herein prescribed.

(e) Such record forms will not be supplied by the department.

(f) The foregoing records shall be legibly written in ink, and contracts of sale for future delivery of two or more distinct products or merchandise shall be kept separate. Each person who executes or makes such contracts of sale shall preserve the books, bills, memoranda, "sales tickets," or trading cards of all transactions, and the purchaser shall preserve the bill, memorandum, agreement, or evidence of sale to which the stamps are affixed for the period of two years, that they may be readily inspected by the revenue officer.

(g) The form of record required by these regulations shall be as follows: (See page 17.)

[¶ 1383] Art. 28. Records to be kept by clearing houses.—(a) All persons who act in the capacity of a clearing house shall keep a record showing:

(1) Name of person for whom each contract is cleared.

(2) Date when contract was made.

(3) Whether the transaction is a purchase or sale.

(4) Quantity of product, or merchandise, involved, whether in tons, pounds, bales, bushels, bags, mats, barrels, gallons, or other unit of weight or measure, as the case may be.

(5) Name of product, or merchandise, including (if not a "basis-grade" contract) grade, type, sample, or description.

(6) Whether the contract is a "basis-grade" contract.

(7) Time specified in contract for delivery.

(8) Date of settlement.

(9) Method of actual settlement.

(b) Records of sales for future delivery of two or more distinct products or merchandise must be kept separate.

(c) The clearing house shall preserve such records for the term of two years.

(d) Such record forms will not be supplied by the department.

[¶ 1384] Art. 29. **Returns of transactions.**—(a) All persons who make contracts of sale or purchase of any product or merchandise, at or under the rules or usages of any exchange, board of trade, or other similar place of business, for future delivery, whether such contracts shall be cleared and adjusted through a clearing house, or directly between the seller and buyer, or otherwise, shall on or before the fifteenth day of each month, or at any other time required by the Commissioner, make a return in writing to the Commissioner, for the preceding month or any other period, verified before some officer authorized to administer oaths, showing:

(1) The number of contracts of sale and purchase of each product or merchandise brought forward from the preceding month or period.

(2) The number of contracts of sale and purchase of each product or merchandise on each day during the current month or period.

(3) The month in which the products or merchandise are to be delivered.

(4) The method of settlement of each contract, i. e., whether by "actual delivery," "notice," "ring," "direct," "transfer," "scratch sale," "pass out," "matched," "pair off," "set off," "give up," through a clearing house or otherwise.

(5) The tax paid thereon.

(6) The number of contracts both of purchase and sale carried forward at the end of the month or period.

(7) The amount of stamps on hand at the beginning of month or period.

(8) The amount of stamps purchased during month or period.

(9) The amount of stamps used during month or period.

(10) Balance of stamps on hand at end of month or period.

(11) The origin of the order or the contracts, whether domestic or foreign.

(b) Provided, That "floor brokers," or "two-dollar men," or "room traders" may omit from their returns information called for under paragraphs marked (1), (6), and (11). But in the event such "floor brokers," "two-dollar men," or "room traders" shall make or settle transactions in any other way than by "transferred or scratch sales," "give ups," or "pass outs," they shall make the full returns prescribed in this article.

(c) Such returns shall be made upon forms to be furnished, upon application, by the collector of internal revenue, of the district in which the exchange, board of trade, or other similar place is located.

[¶ 1385] Art. 30. **Returns by clearing houses.**—(a) Every clearing house shall on or before the fifteenth day of each month, and at such other times as required by the Commissioner, make return in writing, under oath, to the Commissioner, for the preceding month or other period, showing:

(1) The number of open contracts "long" and "short" brought forward for each member from the preceding month.

(2) The number of contracts bought and sold by each member of the association.

(3) The number of tons, pounds, bales, bushels, bags, mats, barrels, or gallons, or other units of weight or measure involved in such contracts, as the case may be.

(4) The month in which such product, merchandise, or commodity is to be delivered.

(5) The method of settlement of said contracts, i. e., whether by "set-off," "notice," or "delivery," or by what method.

(6) Total tax paid by each member of the exchange.

(7) The number of open contracts "long" and "short" carried forward for each member to the following month.

(b) Such returns shall be made upon forms to be furnished, upon application, by the collector of internal revenue of the district in which the clearing house is situated.

[¶ 1386] Art. 31. **Stamps may be affixed to returns.**—(a) If any exchange shall by proper resolution request the Commissioner to permit the members of such exchange to affix the requisite amount of stamps on the returns made by such members to the Commissioner of all transactions made by such member at such exchange and cancel such stamps, and shall file with the Commissioner a copy of the charter and by-laws of such exchange accompanied with a list of the names and addresses of the officers and members of such exchange, designating those of such members who are active and those who are inactive on the exchange, then upon approval of such resolution by the Commissioner, instead of affixing the stamps to the bill or memorandum of sale as now required, it shall be lawful for the members of such exchange to affix the amount of stamps on such returns as shall represent the aggregate amount of tax due on all sales, agreements of sale, or agreements to sell, made by such member during the preceding month or other period designated by the Commissioner, and such stamps shall be canceled by such member in the manner prescribed in these regulations.

(b) Such returns, duly stamped, shall be filed and preserved for two years.

(c) The stamping and filing of such returns shall not in any way relieve the members of such exchange from making and delivering to the buyer the memorandum or bill of sale prescribed by law and these regulations, nor the buyer from the necessity of preserving the same for the term of two years.

[¶ 1387] Art. 32. **Future delivery stamps.**—The stamps to be used on sales, agreements of sale, or agreements to sell products or merchandise at or under the rules or usages of any exchange, or board of trade, or other similar place, for future delivery shall be the ordinary documentary stamps with the words "Future delivery" overprinted thereon, and they shall be known as "Future delivery stamps."

DEFINITIONS AND GENERAL PROVISIONS.

[¶ 1388] Section 1. That when used in this Act—

The term "person" includes partnerships and corporations, as well as individuals;

The term "corporation" includes associations, joint-stock companies, and insurance companies;

The term "domestic" when applied to a corporation or partnership means created or organized in the United States;

The term "foreign" when applied to a corporation or partnership means created or organized outside the United States;

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "Secretary" means Secretary of the Treasury;

The term "Commissioner" means the Commissioner of Internal Revenue;

The term "collector" means collector of internal revenue;

The term "Revenue Act of 1916" means the Act entitled "An Act to increase the revenue, and for other purposes," approved September 8, 1916;

The term "Revenue Act of 1917" means the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917;

The term "taxpayer" includes any person, trust or estate subject to a tax imposed by this Act; * * *

Sec. 1405. That this Act may be cited as the "Revenue Act of 1918."

[¶ 1389] Art. 33. **Further definitions.**—(1) When used in these regulations:

(a) The term "person" includes the plural as well as the singular, also individuals, partnerships, joint-stock companies, associations, and corporations,

except when from the context it is plain that a different meaning is intended:

(b) The term "issue" includes not only actual delivery of, but also acceptance of subscriptions to shares or certificates of stock, or of profits or of interest in property or accumulations in any corporation, joint-stock company, or association;

(c) The term "reorganization" includes those business arrangements whereby the stock and bonds of a corporation are readjusted as to amount, income or priority, or the property is sold to a new corporation for new stock and bonds, or is sold by foreclosure of a mortgage upon it to a purchaser who buys for himself and his associates, and the various proceedings and transactions by which succession of corporations is brought about, and also the proceedings by which existing corporations are continued under a different organization without the creation of a new corporation. (This par. amended to read as above by T. D. 3118, approved Jan. 15, 1921);

(d) The term "broker" includes not only those persons defined as brokers in the Revenue Act of 1916, but also persons defined as commission merchants and commercial brokers under the Revenue Act of 1914, except those persons classed as commercial brokers under the Revenue Act of 1914 whose business it is to negotiate freight and other business for the owners of vessels or for shippers or consignors or consignees of freight carried by vessels, who, in the Revenue Act of 1918 are classed as ship brokers:

(e) The act, omission, or failure of any official, agent, or other person or corporation, employed by any person, partnership, company, association, or corporation, within the scope of his employment or office, shall in every case be deemed also the act, omission, or failure of such person, partnership, company, association, or corporation.

(2) As used in Parts I and II of these regulations: (Issues of stock and sales and transfers of stock.)

(a) The term "sale" or "transfer" includes sales, agreements to sell, memoranda of sales, or deliveries or transfers of legal title to shares or certificates of stock, except as otherwise specifically provided in these regulations;

(b) The term "agreement to sell" includes options, calls in "puts and calls," offers, indemnities and privileges, and contracts, either in writing or by parol, to sell on the deferred or partial payment plan;

(c) The term "share of stock" includes shares and certificates for shares of stock representing interest in corporations, joint-stock companies or associations, or interest in profits or in property or in accumulations in a corporation, and certificates for shares or interest in shares "if, as and when issued," and rights to subscribe for stock or interest in profits or in property or in accumulations, in any corporation;

(d) The term "exchange" includes each and every agency, office, room, or other place of assembly whether under shelter or in the open, at which stock, rights, warrants, interests in property, or in profits, or in accumulations, by corporations, are publicly bought, sold, bid for, offered or exchanged between persons there assembled, in behalf of themselves or others;

(e) The term "clearing house" includes every corporation or association, whether incorporated or not, of individuals, partnerships or corporations wholly or partly engaged in the business of clearing, settling, or adjusting transactions in the purchase, sale, receipt, or delivery of shares of stock, whether or not the same be a part or department of an exchange or an independent body.

(3) As used in Part III of these regulations: (Sales of products or merchandise.)

(a) The term "sale" or "contract of sale" includes all sales, or agreements of sale, or agreements to sell, including so-called transfers or "scratch sales";

(b) The term "agreement of sale," or "agreement to sell," includes options, calls in "puts and calls," offers, indemnities, and privileges;

(c) The term "transferred or scratch sale" includes "pass-outs" or those transactions in which a person buys from another a certain quantity of any product, at a certain price, and at the same session of an exchange, sells to a third person the same quantity of the same product at the same price, and eliminates himself by instructing the person from whom he bought to deliver such product to the person to whom he sold; but no transaction in which a broker or a commission member of an exchange receives a commission greater than that charged to a person who executes his own contracts shall be deemed to be a "transfer" or a "scratch sale";

(d) The term "immediate or prompt delivery" means delivery at once or as soon as practical, and in any event within twenty days of the date of the sale, or agreement of sale, or agreement to sell;

(e) The term "exchange," except where it is plain from the context that a different meaning is intended, includes each and every agency, board of trade, bourse, auction place, or other meeting place, whether under shelter or in the open, at which products or merchandise are publicly bought, sold, bid for, offered, or exchanged, for future delivery, or contracts for such future delivery are made, either between members of such exchange, or between members and nonmembers, patrons, and the public; and includes places at which there is only one manager or firm, who controls all the sales and purchases at that particular place, or where no actual delivery of the products or merchandise is contemplated, and all incorporated and unincorporated associations of individuals, partnerships, and corporations engaged in the business of publicly selling, buying, or exchanging products or merchandise for future delivery;

(f) The term "at an exchange" means near to or in close proximity to or in the immediate vicinity of an exchange, as well as on the floor of an exchange;

(g) The term "clearing house" includes each and every person, corporation, association, or committee engaged in the business of clearing, settling, and adjusting transactions in the purchase, sale, or delivery of products or merchandise, whether such clearing house be a part or department of an exchange or an independent body.

[§ 1390] Art. 34. **Registration.**—(a) Every person engaged, in whole or in part, in any of the following businesses or activities shall file a statement for registration with the collector of internal revenue of the district in which his principal office or place of business is located:

(1) Persons engaged in negotiating, making, or recording sales, agreements to sell, deliveries or transfers of shares or certificates of stock, or rights, or warrants, or certificates of beneficial interest in profits, property, or accumulations of a corporation.

(2) Persons conducting or transacting a stock brokerage business.

(3) Persons accepting or procuring the transmission of orders for the purchase or sale or transfer of stocks, rights, warrants, certificates of beneficial interest, or interests in property, profits, or dividends, to be executed at a stock brokerage office or an exchange or similar place.

(4) Persons engaged in the business of transferring stock other than their own.

(5) Persons engaged in making sales or agreements of sale of, or agreements to sell, any products or merchandise at, or under the rules or usages of, any exchange, for future delivery; or engaged in the business of accepting or

procuring the transmission of orders for such contracts of sale to be executed at an exchange, or under the rules or usages of an exchange, for future delivery.

(6) Persons engaged in conducting an exchange or clearing house or clearing association for the clearing, adjusting, and settling transactions made on exchanges or similar places: Provided, That in case the person conducting such an exchange has a department connected therewith engaged in clearing, adjusting, and settling transactions made on such exchange, he shall so state and shall give the names and addresses of the superintendent and secretary of such clearing house division or committee.

(b) If the person required to file a statement for registration is also a member of an exchange, a seat on which is worth \$2,000 or more, he shall state the average value of such seat for the year ending June 30 immediately preceding his registration.

(c) In the case of a partnership of which two or members are members of exchanges, the names of such members and of each exchange in which memberships are held shall be stated, together with the price of a seat on each exchange.

(d) The statement above required shall be verified on oath by the person required to make such statement, or by the president or secretary of a corporation, association, or clearing house, and shall set forth specifically the character of the business to be conducted and the full name and address of each person or member of a partnership engaged in such business: Provided, That, in the case of a corporation or association, the statement for registration shall set forth the date and place of incorporation and the principal office or place of business both within and without the State where incorporated, with the names and addresses of the chief officer and secretary of such corporation, and be accompanied with a list of the members and their addresses.

(e) Each exchange or clearing house shall also file with such collector a copy of its constitution, charter, or agreement of association and by-laws, rules and regulations, and all amendments thereto as the same may from time to time be adopted, and the names and addresses of new members as from time to time admitted to membership.

(f) If the person or corporation required to file such statement has been licensed under the laws of any State or under any other provision of Federal law the date and place at which such license was issued shall be stated.

(g) In case a person registered as required by these regulations shall suspend or close his business before the end of the year for which he is registered, he shall file in the office of the collector of internal revenue in which he is registered a certificate to that effect, giving the date on which he suspended or closed his business.

(h) Such statement for registration shall be made on a form to be furnished upon application to the collector of internal revenue.

[§ 1391] Art. 35. Record of registration kept by collector.—(a) Every collector shall file and preserve each statement for registration filed with him in accordance with these regulations, and shall issue to each person, partnership, exchange, clearing house, or corporation a certificate of registration, showing the date of issue, the name of the person, or exchange, clearing house, or corporation, conducting the business, the nature of the business for which the license is granted, and the date of expiration of said registry, which certificate of registration shall be signed by the collector, and shall be posted in some prominent place in the office of said person, partnership, exchange, clearing house, or corporation during the period for which it is issued.

(b) If such business is conducted at more than one place, a certificate shall be so posted in each such place of business.

BROKERS.

[¶ 1392] **Sec. 1001.** That on and after January 1, 1919, there shall be levied, collected, and paid annually the following special taxes—

(1) Brokers shall pay \$50. Every person whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, other securities, produce or merchandise, for others, shall be regarded as a broker. If a broker is a member of a stock exchange, or if he is a member of any produce exchange, board of trade, or similar organization, where produce or merchandise is sold, he shall pay an additional amount as follows: If the average value, during the preceding year ending June 30, of a seat or membership in such exchange or organization was \$2,000 or more but not more than \$5,000, \$100; if such value was more than \$5,000, \$150.

[¶ 1393] **Art. 36. Brokers.**—(a) The special tax paid by a firm or corporation as broker, covers individual members of the firm or corporation, as long as such members are trading solely for the benefit of the firm or corporation.

(b) A broker who owns a single seat only in one exchange is required to pay the special tax of \$50 per year and in addition a tax at the rate of \$100 or \$150 per year, according to the value of the seat in the exchange or organization of which he is a member.

(c) If a broker owns a seat in more than one exchange, the additional tax which he is required to pay is the sum of the taxes upon all the seats owned by him.

(d) If a broker owns more than one seat in the same exchange, he is subject to the additional tax only upon the value of a single seat.

(e) If a partnership or corporation owns a number of seats in the same exchange, but holds such seats in the name of the individual members of the partnership or corporation who transact business solely for the benefit of the partnership or corporation, the tax on the ownership of such seats or memberships in such exchange shall not apply to each individual in the partnership or corporation, but only to one seat or one membership.

(f) Where the possession of shares of stock is a prerequisite to membership in an exchange, the lessee of a share of stock in such exchange is liable for the additional tax imposed by subdivision 1 of section 1001.

AFFIXING AND CANCELLATION OF STAMPS.

[¶ 1394] **Sec. 1104.** That whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the same may not again be used: Provided, That the Commissioner may prescribe such other method for the cancellation of such stamps as he may deem expedient.

[¶ 1395] **Sec. 1105.** (a) That the Commissioner shall cause to be prepared and distributed for the payment of the taxes prescribed in this title suitable stamps denoting the tax on the document, articles, or thing to which the same may be affixed, and shall prescribe such method for the affixing of said stamps in substitution for or in addition to the methods provided in this title, as he may deem expedient.

[¶ 1396] **Art. 37. Affixing and cancellation of stamps.**—(a) In the case of the issue of shares of stock, whether on organization or reorganization, the stamps representing the tax shall be affixed to the stock books and not to the certificates issued.

(b) In the case of a sale before certificates are issued, where the evidence of transfer is shown only by the books of the corporation, the stamps shall be placed on such books.

(c) In case the change of ownership is effected by transfer or delivery of the certificate, i. e., where the name of the transferee is inserted in the indorsement or power of attorney on the back of the certificate, the stamp shall be affixed to such certificate and canceled by the person making the sale.

(d) In case of agreement to sell, or where the transfer is by delivery of the certificate assigned in blank, the stamp shall be affixed to the bill, memorandum, or agreement to sell, and canceled by the seller.

(e) In no event shall any transfer agent or corporation accept or transfer any shares of stock or certificates unless stamps for all transfer tax required thereon have been properly affixed either to the certificates of stock or memoranda of sale, as the case may be, and duly canceled.

(f) The person using or affixing the stamp shall write or stamp thereon, in ink, his initials and the day, month, and year on which the same shall be affixed, or shall, by cutting or canceling with a machine or punch, affix his initials and the date as aforesaid, and so deface such stamp as to render it unfit for reuse. In addition to the foregoing, stamps of the value of 10 cents or more shall have three parallel incisions made with some sharp instrument lengthwise through the stamp after the same has been attached to the certificate, or bill, or memorandum, or other evidence of sale or transfer: Provided, That this shall not be required where stamps are canceled by perforation: And provided further, That the cancellation by either method shall not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

ADMINISTRATIVE.

[§ 1397] **Sec. 1105.** (c) All internal-revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein.

[§ 1398] **Sec. 1305.** That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

[§ 1399] **Sec. 1317.** That sections 3172, * * *, and 3176 of the Revised Statutes as amended are hereby amended to read as follows:

[§ 1400] **“Sec. 3172.** Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

[§ 1401] **“Sec. 3176.** If any person, corporation, company, or association fails make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend

any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes.

"If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper * * *."

[¶1402] Art. 38. **Failure to make returns; substitute returns.**—(a) If any person or clearing house required to make returns by this Act or the regulations thereunder shall fail or refuse to make any such return within the time prescribed by these regulations or designated by the Commissioner, then the same shall be made by an internal-revenue officer upon the inspection of the books of the person or clearing house so required, but the making of such return by an internal revenue officer shall not relieve the person or clearing house from any default or penalty incurred by reason of failure to make such return.

(b) Any officer designated by the Commissioner shall have the authority to examine the books, papers, and records kept pursuant to these regulations, and may require the production of any books, records, papers, or statements of account necessary to determine any liability to the tax imposed by this Act or the observance of the provisions of the regulations made in accordance therewith.

SALE OF STAMPS.

[¶1403] Sec. 1107. That the collectors of the several districts shall furnish without prepayment to any assistant treasurer or designated depository of the United States located in their respective collection districts a suitable quantity of adhesive stamps for sale. In such cases the collector may require a bond, with sufficient sureties, to an amount equal to the value of the adhesive stamps so furnished, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. The Secretary may from time to time make such regulations as he may find necessary to insure the safekeeping or prevent the illegal use of all such adhesive stamps.

[¶1404] Art. 39. **Sale of stamps.**—(a) No person other than a collector of internal revenue or duly authorized deputy collector of internal revenue, assistant treasurer, or designated United States depository shall sell or expose for sale, give away, traffic in, trade, barter, lend, borrow, or exchange any stamps issued pursuant to these regulations: Provided, That any person or corporation which has been duly appointed and constituted and is acting agent of any State for the sale of stock transfer stamps of such State, may upon giving bond in a sum to be fixed by the Commissioner, sell United States stamps issued pursuant to these regulations when approved and authorized by the Commissioner.

(b) No person shall buy, receive, or have in his possession, or under his control, any stamps issued pursuant to these regulations, unless such stamps have been purchased directly from the collector of internal revenue, or duly authorized deputy collector of internal revenue, assistant treasurer, United States designated depository, or a designated agent for the sale of State stock transfer stamps, authorized by the Commissioner, in the district in which the stamps are to be used.

(c) All requisitions for stamps to be used under these regulations shall be made in writing, on a form prescribed by the Commissioner, to the collector of internal revenue or duly authorized deputy collector of internal revenue, assistant treasurer, or designated United States depository, or State agent authorized by the Commissioner, in the internal-revenue district in which the stamps are to be used, giving the date thereof, the number and denomination of stamps applied for, and the name and address of the purchaser, and shall be signed in ink by the person receiving such stamps.

(d) If the requisition for such stamps shall be made to any assistant treasurer or United States designated depository or duly authorized State agent for sale of State stock transfer stamps, such assistant treasurer, or United States designated depository, or duly authorized State agent shall keep a record thereof, and at the end of each month shall file with the collector of internal revenue of the district a statement setting forth the number, denomination, and amount of all stamps on hand at the beginning of each month, the number, denomination, and amount sold during the month, and the number, denomination, and amount on hand at the end of the month, accompanied with the requisitions filed by each purchaser, and on or before the fifteenth day of each month shall pay over to such collector of internal revenue all money received from sales of such stamps for the preceding month, taking his receipt therefor.

(e) The collector of internal revenue shall keep the requisitions for stamps sold by him and those sold by such assistant treasurer, designated United States depository, or authorized State agent separate and apart from all other requisitions for stamps, and shall preserve them in his office for a period of two years.

FINES AND PENALTIES.

[§ 1405] Sec. 1102. That whoever—

(a) Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid:

(d) Makes use of any adhesive stamp to denote any tax imposed by this title without canceling or obliterating such stamp as prescribed in section 1104;

Is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense.

[§ 1406] Sec. 1103. That whoever—

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeit stamp, or the impression of any forged or counterfeited stamp, die, plate or other article;

(c) Willfully removes, or alters the cancellation, or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article;

Is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States.

[§ 1407] Schedule A5. * * * Every such bill, memorandum, or other evidence

of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers; and any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, who makes any such sale or agreement of sale, or agreement to sell, or who, in pursuance of any such sale, agreement of sale, or agreement

to sell, delivers any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who delivers such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000 or be imprisoned not more than six months, or both.

[¶ 1408] Art. 40. **Sections of the Revised Statutes applicable.**—The provisions of the internal-revenue laws of the United States, so far as applicable, including sections 3173, 3174, 3175, and 3176 of the Revised Statutes as amended, are applicable to the Revenue Act of 1918.

DATE EFFECTIVE.

[¶ 1409] Sec. 1100. That on and after April 1, 1919, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. * * *

[¶ 1410] Art. 41. **Date effective.**—(a) Certificates of shares of stock, or of profits, or of interest in property or accumulations in any corporation, issued or sold or delivered on or after December 1, 1917, and prior to April 1, 1919, are subject to tax under the Revenue Act of 1917.

(b) Certificates of shares of stock, or of profits, or of interest in property or accumulations in any corporation, issued, sold, or delivered on or after April 1, 1919, are subject to tax under the Revenue Act of 1918.

AUTHORITY FOR REGULATIONS.

[¶ 1411] Sec. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act. * * *

[¶ 1412] Art. 42. **Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent therewith are hereby revoked.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

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TAX
ON
EMPLOYMENT OF
CHILD LABOR

SECTIONS 1200-1207, TITLE XII,
REVENUE ACT OF 1918

Law,
Provisional Regulations No. 46 (T. D.
2843), and Unofficial Rulings

Indexed

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LAW,
PROVISIONAL REGULATIONS No. 46, AS CONTAINED IN T. D. 2843,
AND SERIES OF UNOFFICIAL RULINGS
RELATING TO

**TAX ON EMPLOYMENT OF CHILD
LABOR**

[¶ 1413] Title XII of the revenue act of 1918, approved February 24, 1919, provides an excise tax on the employment of child labor.

The law provides that the first taxable year for the purposes of Title XII shall begin sixty days after the passage of the act. This period will, therefore, begin on April 25, 1919.

These provisional regulations are issued for the guidance of collectors of internal revenue and others concerned, pending the completion and promulgation of regulations in more detail.

Title XII of the revenue act of 1918 reads as follows:

TITLE XII.—TAX ON EMPLOYMENT OF CHILD LABOR.

[¶ 1414] **Sec. 1200.** That every person (other than a bona fide boys' or girls' canning club recognized by the Agricultural Department of a State and of the United States) operating (a) any mine or quarry situated in the United States in which children under the age of sixteen years have been employed or permitted to work during any portion of the taxable year; or (b) any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States in which children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen and sixteen have been employed or permitted to work more than eight hours in any day or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian, during any portion of the taxable year, shall pay for each taxable year, in addition to all other taxes imposed by law, an excise tax equivalent to 10 per centum of the entire net profits received or accrued for such year from the sale or disposition of the product of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment.

[¶ 1415] **Sec. 1201.** That in computing net profits under the provisions of this title, for the purpose of the tax, there shall be allowed as deductions from the gross amount received or accrued for the taxable year from the sale or disposition of such products manufactured within the United States the following items:

- (a) The cost of raw materials entering into the production;
- (b) Running expenses, including rentals, cost of repairs, and maintenance, heat, power, insurance, management, and a reasonable allowance for salaries or other compensations for personal services actually rendered, and for depreciation;
- (c) Interest paid within the taxable year on debts or loans contracted to meet the needs of the business, and the proceeds of which have been actually used to meet such needs;
- (d) Taxes of all kinds paid during the taxable year with respect to the business or property relating to the production; and
- (e) Losses actually sustained within the taxable year in connection with the business of producing such products, including losses from fire, flood, storm, or other casualties, and not compensated for by insurance or otherwise.

[¶ 1416] **Sec. 1202.** That if any such person during any taxable year or part thereof, whether under any agreement, arrangement, or understanding or otherwise, sells or disposes of any product of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment at less than the fair market price obtainable therefor either (a) in such manner as directly or indirectly to benefit such person or any person directly or indirectly interested in the business of such person; or (b) with intent to cause such benefit; the gross amount received or accrued for such year or part thereof from the sale or disposition of such product shall be taken to be the amount which would have been received or accrued from the sale or disposition of such product if sold at the fair market price.

[§ 1417] **Sec. 1203. (a)** That no person subject to the provisions of this title shall be liable for the tax herein imposed if the only employment or permission to work which, but for this section would subject him to the tax, has been of a child as to whom such person has in good faith procured at the time of employing such child or permitting him to work, and has since in good faith relied upon and kept on file a certificate, issued in such form, under such conditions and by such persons as may be prescribed by a board consisting of the Secretary, the Commissioner, and the Secretary of Labor, showing the child to be of such age as not to subject such person to the tax imposed by this title. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be punished by a fine of not less than \$100, nor more than \$1,000, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court.

In any State designated by such board an employment certificate or other similar paper as to the age of the child, issued under the laws of that State, and not inconsistent with the provisions of this title, shall have the same force and effect as a certificate herein provided for.

(b) The tax imposed by this title shall not be imposed in the case of any person who proves to the satisfaction of the Secretary that the only employment or permission to work which but for this section would subject him to the tax, has been of a child employed or permitted to work under a mistake of fact as to the age of such child, and without intention to evade the tax.

[§ 1418] **Sec. 1204.** That on or before the first day of the third month following the close of each taxable year, a true and accurate return under oath shall be made by each person subject to the provisions of this title to the collector for the district in which such person has his principal office or place of business, in such form as the Commissioner, with the approval of the Secretary, shall prescribe, setting forth specifically the gross amount of income received or accrued during such year from the sale or disposition of the product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, in which children have been employed subjecting him to the tax imposed by this title, and from the total thereof deducting the aggregate items of allowance authorized by this title, and such other particulars as to the gross receipts and items of allowance as the Commissioner, with the approval of the Secretary, may require.

[§ 1419] **Sec. 1205.** That all such returns shall be transmitted forthwith by the collector to the Commissioner, who shall, as soon as practicable, assess the tax found due and notify the person making such return of the amount of tax for which such person is liable, and such person shall pay the tax to the collector on or before thirty days from the date of such notice.

[§ 1420] **Sec. 1206.** That for the purpose of this act the Commissioner, or any other person duly authorized by him, shall have authority to enter and inspect at any time any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment. The Secretary of Labor, or any person duly authorized by him shall, for the purpose of complying with a request of the Commissioner to make such an inspection, have like authority, and shall make report to the Commissioner of inspections made under such authority in such form as may be prescribed by the Commissioner with the approval of the Secretary of the Treasury.

Any person who refuses or obstructs entry or inspection authorized by this section shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both such fine and imprisonment.

[§ 1421] **Sec. 1207.** That as used in this title the term "taxable year" shall have the same meaning as provided for the purposes of income tax in section 200. The first taxable year for the purposes of this title shall be the period between sixty days after the passage of this act and December 31, 1919, both inclusive, or such portion of such period as is included within the fiscal year (as defined in section 200) of the taxpayer.

[§ 1422] **Article 1.** In Title XII of the revenue act of 1918, the following words and terms as used therein signify as follows:

- (a) "Person" includes individuals, partnerships, and corporation;
- (b) "Corporation" includes associations, joint stock companies, and insurance companies;
- (c) "Secretary" means Secretary of the Treasury;
- (d) "Commissioner" means Commissioner of Internal Revenue;

(e) "Under the age of sixteen years" means those children who have not yet completed their sixteenth year;

(f) "Under the age of fourteen years" means those children who have not yet completed their fourteenth year;

(g) "Eight hours in any day" means the actual period of employment and shall be reckoned from the time the child is required or allowed to be at the place of employment until he or she stops work for the day, exclusive of one continuous period of a definite length of time during which the child is off work and not subject to call for duty of any kind;

(h) "Six days in any week" means six consecutive days, no one of which shall consist of more than eight hours of working time. A day shall not begin before 6 o'clock a. m. and must not extend beyond 7 o'clock p. m.

[§ 1423] Art. 2. Canning clubs exempted from liability to tax by the provisions of section 1200 are boys' and girls' canning clubs, as that term has been heretofore generally applied, which are conducted in good faith as canning clubs only and which are recognized as such by the agricultural department of the State in which they are located and by the United States Department of Agriculture.

[§ 1424] Art. 3. The law imposes an excise tax, which is, in addition to all other taxes imposed by law, of 10 per cent of the entire net profits received or accrued during each taxable year from the operations of every mill, cannery, workshop, factory, or manufacturing establishment in which any child under the age of 14 years has been employed or permitted to work, or in which any child between the ages of 14 and 16 has been employed or permitted to work more than eight hours in any day or more than six days in any week, or after the hour of 7 o'clock p. m., or before the hour of 6 o'clock a. m. The tax is also imposed on the entire net profits received from the operations of any mine or quarry in which any child under the age of 16 years has been employed or permitted to work. Liability for the tax is established by the employment of any child laborer as defined by the statute. The product of the child's labor is not the basis for the imposition of the tax. In every case, the tax must be applied to the entire net profits of the taxpayer.

[§ 1425] Art. 4. Returns under this title are to be made as provided by section 1204 "on or before the first day of the third month following the close of each taxable year" under oath by each person subject to the provisions of this title "to collector for the district in which such person has his principal office or place of business, in such form as the Commissioner, with the approval of the Secretary, shall prescribe."

[§ 1426] Art. 5. The term "taxable year" means a calendar year or a fiscal year ending in such calendar year during which the tax is imposed. The fiscal year means an accounting period of 12 months ending on the last day of any month other than December. The first taxable year, to be called the taxable year 1919, shall be the period between April 25, 1919, and December 31, 1919, both inclusive, or any fiscal year ending within the same period. Forms for making returns will be prepared and in the hands of collectors before the time arrives for the making of return.

[§ 1427] Art. 6. The collector shall transmit forthwith all such returns to the Commissioner (sec. 1205), "who shall, as soon as practicable, assess the tax found due and notify the person making such return of the amount of tax for which such person is liable, and such person shall pay the tax to the collector on or before 30 days from the date of such notice."

[§ 1428] Art. 7. Actions to enforce the penalties provided for by sections 1203 and 1206 will be brought in the Federal courts by the United States district attorney of the Federal judicial district in which the offense occurs.

[¶ 1429] Art. 8. Pursuant to statute the Child Labor Tax Board, consisting of the Secretary of the Treasury, the Commissioner of Internal Revenue, and the Secretary of Labor, has prescribed the following provisional regulations:

Certificate of age.—Certificates of age, in order to free from liability to taxation persons operating the business specified, shall be either:

(a) Federal age certificates for children between 14 and 16 years of age when employed or permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment, and for children between 16 and 17 years of age when employed or permitted to work in or about any mine or quarry. Such certificates shall bear (1) the child's name; (2) birthplace; (3) month, day, and year of birth; (4) color; (5) sex; (6) kind of evidence of age accepted and age when physical age is accepted; (7) signature of the child; (8) name and address of child's parent, guardian, or custodian; (9) name and address of employer; (10) signature, address, and official designation of agent issuing the certificate; (11) date and place certificate was issued.

(b) An age certificate, working or employment certificate or permit, or other similar paper as to the age of the child, issued in accordance with the laws of the State in such States as are designated by the board.

[¶ 1430] Art. 9. **Proof of age.**—Age-certificate inspectors authorized to issue Federal certificates of age shall do so only after securing, examining, and approving proof of age as follows: The child shall make application to the age-certificate inspectors in person, accompanied by parent, guardian, or custodian, with documentary evidence of age, showing that he is 14 years of age or over if the employment is to be in a mill, cannery, workshop, factory, or manufacturing establishment, or that he is between 16 and 17 years of age if employment is sought in or about a mine or quarry. Documentary evidence or proof of age, required in the order following, shall be:

(a) A birth certificate or duly attested transcript thereof issued by the registrar of vital statistics or other officer charged with the duty of recording births.

(b) A baptismal certificate or transcript of the record of baptism, duly certified, showing the date of birth and place of baptism of child.

(c) A bona fide contemporary record of the date of the child's birth, comprising a part of the family record of births in the Bible, or other documentary evidence satisfactory to the board, such as a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, a passport showing the age of the child, or a life insurance policy: Provided, That such other satisfactory documentary evidence has been in existence at least one year, and in the case of a life insurance policy at least four years: And provided further, That a school record or a parent's, guardian's, or custodian's affidavit or other written statement of age shall not be accepted except as specified in paragraph (d).

(d) A certificate signed by a public-health physician or a public-school physician, stating, in his opinion, the physical age of the child. Such certificate shall show the height and weight of the child and other evidence of physical age revealed by the physician's examination or upon which the opinion of the physician is based. A parent's, guardian's, or custodian's signed statement as

to the age of the child, and a record of age as given on the register of the school first attended by the child, or in any school census, if obtainable, shall be submitted with the physician's certificate showing physical age. No certificate shall be issued if the physician's certificate of physical age or the parent's statement or the register of the school first attended or the school census shows the child to be under the age of 14 if employment in a mill, cannery, workshop, factory, or manufacturing establishment is contemplated, or under the age of 16 if employment in a mine or quarry is contemplated.

The agent issuing the age certificate for a child shall require the evidence of age stated in paragraph (a) in preference to that specified in any subsequent paragraph, and shall not accept evidence of age permitted by any later paragraph unless he shall receive and file evidence that the proof of age required by the preceding paragraph or paragraphs can not be obtained.

[¶ 1431] Art. 10. **Acceptance of State certificates.**—States in which age certificates, or working or employment certificates, permits, or other similar papers as to the age of the child are issued under State authority, substantially in accord with the requirements of this act and these regulations, may be designated as States in which such certificates shall have the same force and effect as Federal age certificates, except as the acceptance for the purposes of this act of individual certificates may be suspended or revoked. Certificates, permits, or other similar papers in States so designated shall have the same effect as Federal age certificates so long as they shall remain in force, the Commissioner of Internal Revenue or such person as he may designate possessing the right to suspend or revoke the acceptance for the purposes of this act of individual certificates at any time. Certificates imposing restrictions or conditions in addition to the requirements of the Federal law or of the regulations shall not be held inconsistent with the law.

[¶ 1432] Art. 11. **Time record.**—A time record shall be kept daily by persons operating any mill, cannery, workshop, factory, or manufacturing establishment, showing the hours of employment for each and every child who has completed the fourteenth year but has not yet completed the sixteenth year of its age, whether employed on a time or a piece rate basis. Certificates of age for children employed in any mill, cannery, workshop, factory, or manufacturing establishment may be suspended or revoked for failure on the part of the person operating the same to keep time records as required by this regulation or for false or fraudulent entries made therein.

[¶ 1432 (a)] Art. 12. Federal agents will visit those States in which Federal certificates are to be issued and will issue the certificates in person. These agents will communicate with the employer prior to their arrival.

Further regulations will be promulgated as soon as practicable.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved:

CARTER GLASS,
Secretary of the Treasury.

W. B. WILSON, Secretary of Labor.

Approved April 19, 1919.

UNOFFICIAL RULINGS.

of

INTERNAL REVENUE COMMISSIONER.

[¶ 1433] Bakeries.—A tax is imposed on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down. Any room or place in which goods or products are manufactured or repaired, cleaned, sorted, or altered, in whole or in part, for sale or wages, is a workshop, factory, or manufacturing establishment within the meaning of the Child Labor Tax Law. A bakery, therefore, would come within the purview of this title.—June 14, 1919.

[¶ 1434] Basis of tax.—An employer is liable to the imposition of a tax equivalent to 10 per centum of the entire net profits received or accrued for the year from the sale or disposition of the product of any of the establishments specified in the act where children have been employed beyond the limitation as to years and hours set forth in the statute. The product of a child's labor either actually or relatively to the entire product of the labor of all employees is in nowise made the measure of the tax. The tax is on the net profits of the mill or other establishment and not upon the net profits derived from the labor of the children.—April 9, 1919.

[¶ 1435] Bottling plants.—A mixing or bottling plant in which carbonated water is added to prepared sirups producing beverages known as soft drinks is a manufacturing establishment within the meaning of the law and the employment of children therein contrary to the standards laid down will subject the person operating the establishment to the tax.—May 28, 1919.

[¶ 1436] Cane plantations.—Every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment is subject to the tax imposed on the employment of child labor under the provisions of section 1200, but said section does not apply to the agricultural industry, although it may be a part of a complete industrial cycle. A sugar mill and sugar-cane plantation may be operated as a unit, but the law does not apply to the labor employed in the production of the cane. The employment of children contrary to the terms of the law in or about the mills would subject the person operating the mill to the imposition of the tax, but employment or permission to work of children in the fields in purely farming or agricultural operations does not come within the taxation intent of the law.—April 12, 1919.

[¶ 1437] Canneries, and labor on farms, in sheds in fields, etc., preparing farm products for canneries.—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing plant in which children under 14 years of age are employed, or in which children between the ages of 14 and 16 are permitted to work more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m., during any portion of the taxable year. These regulations do not apply to the agricultural industry. A cannery and a farm may be operated as a unit but the law does not apply to the labor employed in the production of corn and beans on the farm, nor to labor employed in other purely agricultural operations. The employment of children, however, in or about a mill, cannery, factory, workshop, or manufacturing establishment contrary to the terms of the law, would subject to tax the person operating the business.

The terms mill, cannery, workshop, factory, or manufacturing establishment, as used in the Child Labor Tax Law, clearly mean the premises on which the manufacturing business is conducted, including the buildings and grounds,

including in their ordinary sense whatever is necessary to carry on the mechanical operation or process. No distinction can be made in employment in different places. The duties of child employees frequently take them into and often require their presence in the plant or manufacturing part of such establishments when they are accessible. A child employed by a person operating a cannery, whether directly at work connected with machinery or not, is employed in a cannery within the meaning of the law. The law applies if children are employed in or about or in connection with the establishment.

Any part essential to the conduct of a manufacturing business is as much a part of a manufacturing establishment as the buildings in which the machinery is housed or the ground occupied by the buildings. The snipping of beans or husking of corn for canning, even though carried on at some distance from the cannery proper, is an essential part of the business. Beans are snipped and corn husked as a necessary part of a canning operation and not a necessary part of an agricultural operation. Farming or agricultural work may cease and be complete with the production and picking or gathering of beans and corn, but when these vegetables are prepared and broken, snipped or husked, with a view to their immediate use in canning or preserving, for public sale, the snipping and husking, wherever carried on—in the fields, in sheds or shelters on the farm, in farm houses, or in sheds and shelters near the canneries—are a part of a cannery operation and the children employed on such work are employed in a cannery within the meaning of the law.—June 26, 1919.

[§ 1438] Chain carriers with surveyor or sawmill company.—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing establishment in which children under 14 years are employed, or in which children between 14 and 16 years are permitted to work more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m. during any portion of the taxable year. No distinction is made in any kind or class of employment connected with the operation of the establishments specified. However, the employment of children in the woods, as chain carriers for land surveyor and timber estimator, the nature of their employment never requiring or permitting their presence in or about the mechanical operations essential to the sawmill industry, does not come within the taxation intent of the law, and would not subject the person operating the sawmill to the tax imposed under Title XII, Revenue Act of 1918.—May 22, 1919.

[§ 1439] Children in factories with mothers.—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing establishment in which children under 14 years are employed or permitted to work.

The presence of any child in or about any of the establishments specified in the law will be taken as *prima facie* evidence of its employment therein. It is immaterial that the children are in or about the establishment with their mothers and are entirely too young to work or be of service there.—June 4, 1919.

[§ 1440] Commissary owned and operated by sawmill.—A commissary or mercantile establishment not a part of a sawmill, although operated by the same company, is not an essential part of the manufacturing enterprise, nor is it necessary to carry on the mechanical operation or process and does not come within the taxation intent of Title XII, Revenue Act of 1918. The presence of child employees of the company, however, in or about the sawmill premises contrary to the standards laid down in said title would subject the person operating the mill to the tax.—May 21, 1919.

[§ 1441] Delivery boys during vacation for workshops and manufacturing establishments.—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing establishment in which children

under 14 years of age are permitted to work during any portion of the taxable year. No exemption can be made under this act for the vacation period, and no distinction is made in the kind or class of employment in connection with any of the establishments specified. Actual employment in the manufacturing or production part of a plant is not necessary to the application of the law. Therefore the employment of boys under 14 years of age in or about workshops or manufacturing establishments will subject the person operating such establishments to the imposition of the tax.—May 27, 1919.

[¶ 1442] **Employment of boys by an ice factory to accompany delivery wagons and carry ice into house.**—Employment of boys under 14 years on work outside of the factory who are never required or permitted in or about the factory premises at any time, will not subject the person operating the establishment to the tax imposed by Title XII, Revenue Act of 1918. If the boys are permitted to go with the wagons when being loaded at the factory premises, the employer will be liable to the tax.

Boys between 14 and 16 years may be employed in or about the factory without subjecting the person operating the establishment to the tax, provided they are not permitted to work more than 8 hours in any day or more than 6 days in any week, or before 6 a. m. or after 7 p. m.—May 2, 1919.

[¶ 1443] **Drug stores (retail).**—The Revenue Act of 1918 imposes a tax on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down.

The law does not apply to a drug store of itself and apart from the operation of any of the establishments specified in section 1200.—May 2, 1919.

[¶ 1444] **Express companies.**—A tax is imposed on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down.

Express companies, in no way connected with any of the establishments specified, would not be liable to the tax.—May 1, 1919.

[¶ 1445] **Farming or agricultural operations.**—No tax is imposed on the employment of children in carrying on purely farming or agricultural operations in no way connected with a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment.—May 2, 1919.

[¶ 1446] **Grocery stores (retail).**—Employment of children in a retail grocery store in no way connected with mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment does not come within the provisions of section 1200, Title XII, Revenue Act of 1918.—May 15, 1919.

[¶ 1447] **Hours of labor.**—The terms of the law which apply to children between the ages of 14 and 16 make impossible the extension of the time they are employed or permitted to work in any day beyond eight hours.—March 19, 1919.

[¶ 1448] **Janitor service in office of manufacturing plant.**—No distinction can be made in the kind of occupation or employment in any of the establishments specified in section 1200. A factory office is a part of the factory, and where children under 14 years of age are employed to do sweeping and cleaning in the office of a manufacturing plant during any portion of the year, the person operating such establishment is subject to the tax imposed.—May 16, 1919.

[¶ 1449] **Laundries (steam).**—Under Title XII, Revenue Act of 1918, a steam laundry would be classed as a workshop.—June 9, 1919.

[¶ 1450] **Lighting and extinguishing street lamps—Gas companies.**—A tax is imposed on every person operating a mill, cannery, workshop, factory,

or manufacturing establishment in which children under 14 are employed, or children between 14 and 16 are employed for more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m.

A gas company is a manufacturing establishment within the meaning of the law and the employment of children, contrary to the standards laid down, in or about the plant or premises, would subject the person operating the establishment to the tax imposed.

The employment of boys between 14 and 16 years to light and extinguish street lamps, however, the nature of their employment being such that their presence in or about the gas factory premises is not required or permitted during any portion of the taxable year, does not come within the taxation intent of the law.—May 21, 1919.

[¶ 1451] **Meat market (wholesale and retail).**—A wholesale and retail establishment engaged in the manufacture, for supplying local trade, of bologna sausage, head cheese, etc., is within the category of establishments specified in section 1200, and employing or permitting children to work therein contrary to the standards laid down in the law would subject the person operating the establishment to the tax imposed by said section.—April 12, 1919.

[¶ 1452] **Mercantile store.**—The employment of children in a mercantile store, physically separate and wholly apart from the operation of any of the establishments specified in section 1200, does not come within the taxation intent of the law.—May 2, 1919.

[¶ 1453] **Mercantile store operated in connection with clay-manufacturing business.**—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing establishment in which children under 14 years are employed or permitted to work, or in which children between 14 and 16 years are permitted to work more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m., during any portion of the taxable year.

No distinction is made in employment in different departments of the establishments specified in Title XII, and it is not possible to exempt from the application of the law any occupation or class of employment connected with the operation of these establishments. Actual employment in the manufacturing or production part of the plant is not necessary to make the person operating the establishment liable to tax. Where a store is connected with a manufacturing establishment and is part of the same enterprise, the employment of children, whether as delivery boys or in going from department to department with messages or in or about the plant in any capacity, contrary to the standards laid down, would subject the person operating the plant to the tax.

A mercantile store of itself and in no way connected with any of the establishments specified in section 1200, does not come within the taxation intent of Title XII of the Revenue Act of 1918. Employment of children in a store wholly separate and apart from a manufacturing establishment and conducted as a separate enterprise, even though owned and operated by a manufacturing company and whose child employees are never required or permitted or suffered to be in or about the manufacturing establishment, would not subject the person operating the establishment to the tax.—June 14, 1919.

[¶ 1454] **Mines (in or about).**—The term mining premises as applied to the Child Labor Tax Law is held to mean any property used in mining operations—that is, the mining lands in which the deposits of minerals are worked by ordinary mining processes—and is limited to the grounds and buildings used in the operation of the mine.

The different departments of the mining premises, such as work on tipples, breakers, tracks, in mine office, carrying messages from department to depart-

ment, hauling materials to and from the mines, or any other operation connected with the whole mode of obtaining metals or minerals for commercial purposes, come within the purview of the law.

Stores and other enterprises outside and away from the mining operations, though owned and controlled by the mining company, are not considered necessary to carry on the mechanical operation or process of the mine and the provisions of section 1200 relating to mines do not apply to the employment of children in such places, the character of the work never requiring or permitting their presence in or about the mines.

Making of mine props and cutting of ties or the manufacture of other material purchased for use in a mine is not part of the mining process and the law relating to employment of children in mines would not apply. If, however, such work is done in connection with the operation of a sawmill or lumber mill, or other manufacturing establishment, the law pertaining to mills and manufacturing establishments would apply.

If the grading of a road takes a child employee under 16 years in or about a mine, the person operating the mine will be liable to the tax imposed by section 1200. If the work of grading a road does not require the child to be in or about the mine, his employment will not subject the mine operator to the tax. The tax is not imposed on the employment of children at road grading, nor is it imposed on a mining company for employment of children under 16 everywhere, but it is imposed upon the mine operator if children under 16 years are employed in or about the mines.—August 2, 1919.

[§ 1455] **Mines—Coke ovens.**—A coke plant is not considered a part of a mining industry but is held to be a manufacturing establishment within the meaning of the law. Under the provisions of section 1200, the tax is imposed if children under 14 years are employed or if children between 14 and 16 are permitted to work more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m., during any portion of the taxable year.—June 21, 1919.

[§ 1456] **Moving picture business.**—A tax is imposed on every person operating the establishments specified in section 1200 if children are employed contrary to the standards laid down, the tax being imposed on the entire net profits of the taxable year.

Although employment in connection with the making of moving pictures may be harmful to children in many ways, it is not believed that the law-making body intended that "factory, workshop, or manufacturing establishment" was meant to embrace the making of moving pictures, either in studio or out of doors. Employment of children in the moving picture business, therefore, does not come within the taxation intent of Title XII of the Revenue Act of 1918.—June 21, 1919.

[§ 1457] **Newsboys.**—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing establishment in which children under 14 years are employed, or children between 14 and 16 years are employed for more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m.

A newspaper publishing plant is a manufacturing establishment, and the employment of children contrary to the terms of the law, in connection with the manufacturing processes, or in or about the plant, would subject the person operating the establishment to the tax imposed. The employment of children in the distribution of papers outside and away from the manufacturing establishment, however, does not come within the taxation intent of the law.—May 5, 1919.

[¶ 1458] Newspaper publishing company.—A newspaper publishing company is a manufacturing establishment within the meaning of the law. No distinction can be made in employment in different departments of the same establishment, and the employment of office boys or messengers between 14 and 16 years before 6 a. m. or after 7 p. m., would subject the person operating the establishment to the tax.—May 31, 1919.

[¶ 1459] Nursery—Blacksmith shop—Box making.—Employment of children under 14 years of age or those between 14 and 16 for more than eight hours a day or more than six days in any week, or before 6 a. m. or after 7 p. m., in a blacksmith shop or in an establishment for making boxes would subject the person operating the business to imposition of a tax on the net profits of the entire industry.

The nursery industry as an industry does not come within the taxation intent of the law. (It is assumed that the fruit is sold or disposed of in the natural state.) Parts of the business, however, which may be classed as the operation of a workshop and as manufacturing—that is, the blacksmith shop and making boxes—are not exempt, and employing, permitting to work, or suffering children to be in these establishments will subject the operator to the tax.—April 1, 1919.

[¶ 1460] Offices (general and factory).—A tax is imposed on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down. The terms workshop, factory, or manufacturing establishment as used in the Child Labor Tax Law, clearly mean the premises on which the manufacturing business is conducted, including the buildings and grounds. The terms in their ordinary sense include whatever is necessary to carry on the mechanical operation or process. Any part essential to the conduct of a manufacturing business is as much a part of a manufacturing establishment as the buildings in which the machinery is housed, or the ground occupied by the buildings. A factory office, therefore, is a part of the establishment and no distinction can be made in employment in different departments. The duties of office employees frequently take them into and often require their presence in the plant or manufacturing part of such establishments when they are accessible. Actual employment in the manufacturing or production part of a plant is not necessary, and it is not possible to exempt from the application of the law any occupation or class of employment connected with the operation of the establishment specified. The law applies if children are employed in or about the establishment.

An office which occupies the top floor of a factory building of a manufacturing and selling company would come within the application of the law, and if children under 14 years are employed, or if children between 14 and 16 years are permitted to work more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m., the person operating the establishment would be subject to the imposition of the tax.

Office employees as a class and apart from the operation of the establishments specified are not believed to be within the taxation intent of Title XII, Revenue Act of 1918, and the provisions of this act do not apply to the employment of children in a general office, a main office, or district office established purely for office purposes, in no way a part of the manufacturing establishment as defined, but conducted solely as a city office whose employees under the age of 16 years are never required or permitted or suffered to be in or about the manufacturing establishment.—May 31, 1919.

[¶ 1461] Son of proprietor.—A tax is imposed on every person operating a mill, cannery, workshop, factory, or manufacturing establishment in which children under the age of 14 years are employed or permitted to work. No dis-

inction can be made under the law in the matter of the owner's children.—May 31, 1919.

[¶ 1462] **Stonecutting.**—A tax is imposed on every person operating a mine or quarry in which children under 16 years are employed or permitted to work. When a stonecutter's work is away from the quarry, and in no way connected with the quarry operations, the employment of a child under 16 years would not come within the application of the law pertaining to mines and quarries.

The business of stonecutting, however, would be classed with "workshop, factory, or manufacturing establishment," and the standards laid down for the employment of children in this class of establishment should be observed.—August 2, 1919.

[¶ 1463] **Store and office connected with workshop.**—Any room or place in which an article or part thereof is altered, cleaned, repaired, or adapted for sale is a workshop, factory, or manufacturing establishment within the meaning of the law. Under the provisions of section 1200 actual employment of children in the manufacturing or production part of a plant is not necessary to make the operator of the establishment liable to the tax. No distinction can be made in employment in different departments of the same establishment, and where workshop or factory is connected with a store or office and is part of the same enterprise, the employment of children in the store or office, or going from department to department with messages would come within the taxation intent of the law.

To avoid liability to tax, children between the ages of 14 and 16 years should not be permitted to work more than eight hours in any day or more than six days in any week, or before 6 a. m. or after 7 p. m.—May 2, 1919.

[¶ 1464] **Telegraph company—Office boys and messengers.**—A tax is imposed on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down. The Western Union Telegraph Co., not being in any way connected with the operation of establishments mentioned in section 1200, employment of boys between 14 and 16 years of age as office boys or messengers before 6 a. m. or after 7 p. m., does not subject the company to the tax by reason of the employment of children contrary to the terms of the act.—May 31, 1919.

[¶ 1465] **Telephone companies.**—The tax on the employment of child labor is imposed on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down.

Telephone companies in no way connected with any of the establishments specified would not come within the taxation intent of the law.—May 7, 1919.

[¶ 1466] **Timber cutting in the woods in connection with sawmill or lumber mill operations.**—The law does not exempt any class or kind of employment in connection with any of the establishments specified in section 1200, and no distinction can be made between occupations in different departments of the same establishment.

The term manufacturing establishment as used in the Child Labor Tax Law clearly means the premises on which the manufacturing business is conducted and includes whatever is necessary to carry on the mechanical operation or process. Any part essential to the conduct of a manufacturing business is as much a part of a manufacturing establishment as the buildings in which the machinery is housed or the ground occupied by the buildings. Even though the cutting of timber is carried on some distance from the sawmill proper, it is an essential part of the industry, and the work of employees, particularly chil-

dren, frequently exposes them to dangers not easily separated from the hazards of the enterprise generally.

The Child Labor Tax Law applying to manufacturing establishments covers the cutting of timber and logging force operations as well as all other departments connected with the operation of a lumber mill or manufacturing establishment.—May 27, 1919.

[§ 1467] Time (sun or clock).—Act of Congress approved March 19, 1918, entitled "An act to save daylight and to provide standard time for the United States," provides that—

In all Statutes * * * relating to time * * * within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed.

The standard of hours relating to the employment of children as provided by section 1200, must be determined in accordance with the provisions of the law on this point, and the United States standard time of the zone in which a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment is located will govern in the enforcement of the Child Labor Tax Law.—May 2, 1919.

[§ 1468] Title and trust companies.—A tax on the employment of child labor is imposed on every person operating a mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment in which children are employed contrary to the standards laid down.

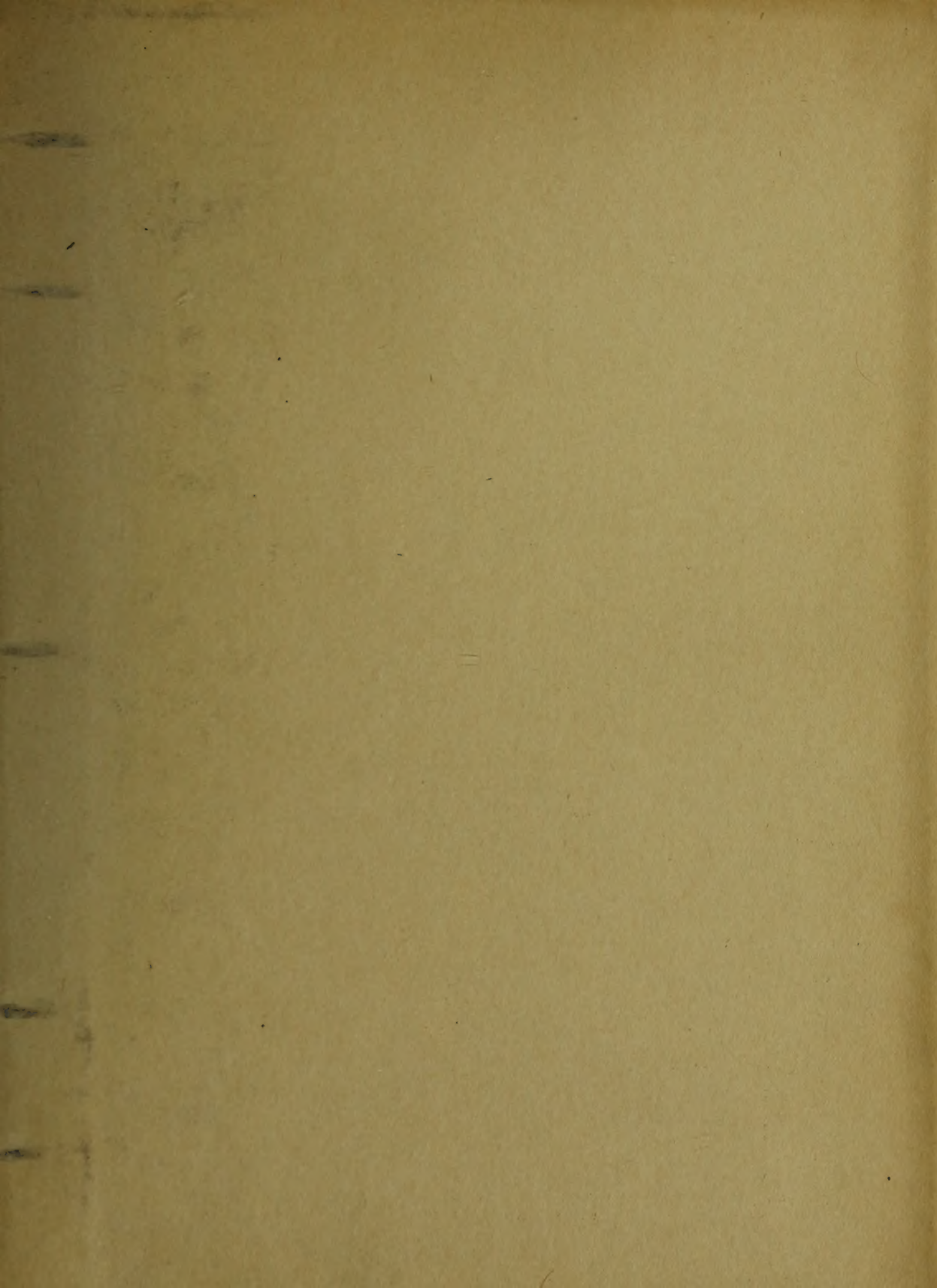
Trust and title companies, in no way connected with the operation of any of the establishments specified, do not come within the taxation intent of the law.—May 8, 1919.

[§ 1469] Tobacco plantations (picking and stringing tobacco leaves).—The taxing measure does not apply to the employment of children in purely farming or agricultural operations where the character of the work never requires or permits the employee to be in or about the establishments specified in section 1200. Assuming that the picking and stringing of leaves of tobacco on a plantation is an agricultural operation in no way connected with the operation of workshop, factory, or manufacturing establishment, the employment of children to perform such work does not come within the taxation intent of Title XII of the Revenue Act of 1918.—June 20, 1919.

[§ 1470] Turpentine forests.—The employment of children in occupations which pertain purely to agriculture or to forestry does not come within the taxation intent of the law. The employment of children in carrying on forestry operations in turpentine woods—such as distributing the "cups" or receptacles to catch the crude gum, or collecting the cups or receptacles, or dipping or removing the crude gum from the collecting receptacles and transferring it to buckets and thence to barrels, or raking dead leaves and rubbish away from the pine trees, or serving as water boys—occupations which are physically separate and wholly apart from the still or manufacturing establishment and from the character of the work would not permit the children to be in or about the still or manufacturing establishment, does not subject the employer to the tax.—July 7, 1919.

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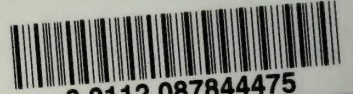
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